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ONTARIO ADVISORY COMMITTEE ON CONFEDERATION

M E E T I N G

held at

The Frost Building, Queen's Park, Toronto

on

FRIDAY, November 10, 1967

VERBATIM REPORT OF PROCEEDINGS

Meeting held in the Board Room, 5th Floor
The Frost Building, Queen's Park, Toronto,
ONTARIO ADVISORY COMMITTEE ON CONFEDERATION

PRESENT: (Members)

Mr. J.M. MacDonald (Chairman)

Prof. A. G. S. G. S.

Prof. J. G. G. G.

Prof. P.W. Fox

Dr. E. Forsey

M E E T I N G

Dean W.R. Lederman

Mr. C.R. Maguire held at

The Frost Building, Queen's Park, Toronto

Prof. B.C. Melvor

Prof. E. McWhinney on

Prof. J. Meisel

FRIDAY, November 10, 1967

Mr. J.H. Perry

Mr. R.N. Seguin

Prof. T.H.S. Symons

Mr. S.V. Clarkson Deputy Minister,

Economic Development

Mr. D.W. Stevenson

Mr. R.A. Farrell) Secretaries

Mr. E. D. D. D.) Secretary

Mr. C. D. D. D.

Mr. E. D. D. D.

Received by the Committee at this meeting:

The Hon. J.E. Roberts, C.C. Prime Minister

VERBATIM REPORT OF PROCEEDINGS

Dr. J. E. D. D.

, November 10, 1967.

(Members)

Macdonald (Chairman)

Brady

5. Creighton

W. Fox

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Lederman

Magone, Q.C.

L. Matte

McIvor

McWhinney

Meisel

Perry

Seguin

M.B. Symons

Stevenson)

Farrell) Co-Secretaries

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) Secretariat

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by the committee at this meeting.

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--- At 9.40 a.m.

THE CHAIRMAN: Let us begin then. May I offer apologies for absence, first of all, from Dean Dillon, who regrets very much that he will not be at the meeting today; Professor Conway, who was committed to looking after the guests of York University, Lord and Lady Snow, who are also personal friends of Professor Conway, it appears, and are receiving honorary degrees at York University today. He is, however, most interested in hearing any comments you may have on his paper, which was sent out to the members of the Committee earlier this week, if you have had an opportunity to explore it. Finally, Harvey Perry will be here at 10.30 this morning.

Now, a word about the agenda. We agreed that this would be more or less a meeting of a special character, to have a final run-through of both our arrangements and the content of the Confederation of Tomorrow Conference, and to have some discussion with the Prime Minister. Before the Prime Minister comes over, which will be in the neighbourhood of 10.30, I am going to ask Mr. Stevenson to give some briefing on the Conference so far; then I thought we should have some discussion of items and procedure for

discussion with the Prime Minister. When the Prime Minister is here, I expect you will want to quiz him or discuss with him or advise him on the Ontario approach to the Conference, which we have been working on, of course, and which has changed from day to day in the fast currents of federal-provincial affairs.

Then for the balance of the day, I would simply like to work through the agenda with you and have, as it were, a mock conference. You can take on the mantle of whichever Premier you choose, and we might work through the agenda.

Before doing anything further, however, I would like to introduce to the meeting Stewart Clarkson, who is Deputy Minister of the Department of Economics and Development, and is the Chairman of the Planning Committee for the Conference, which means he has had a very heavy job in the last few weeks co-ordinating the various sub-committees that are working in the many areas and many facets that go into a conference of this kind. Don Stevenson has been presiding over the agenda sub-committee, and then the Director of the Special Projects branch in the Department has been presiding over the sub-committee on all the physical arrangements and organization. Then the Director of our Information Services

branch has been looking after the very tangled area of press and media relations and so on.

Stewart, I don't know if you want to offer any views at this stage on the work that has been under way, but I had asked Don if he would, in particular on the agenda side but on other sides, be prepared to brief us on how things were proceeding.

MR. STEVENSON: Thank you, Mr. Chairman. Just before we start, I would like to introduce yet one other member of our Federal-Provincial Affairs Secretariat, but I hasten to add that we are approaching the capacity both of the complement authorized and what we think is a desirable size for the Secretariat. Our latest addition is Mr. Bob Metcalfe in the middle who, I think, was referred to at the last meeting, but who has just joined us from the University of Toronto. He has taken a degree from Oxford, where he wrote a thesis on French Canadian nationalism. He has had a year in the Sorbonne, after graduating from Carleton University in, first, essentially economics and then political science. So I think he has a background that really covers to some extent all three areas of the Committee's work.

Secondly, I would like to pass around a mock-up of the one volume edition of the Advisory Committee's papers from the spring.

We now hear from Copp Clark that they will be available and up to us by next Wednesday, so that we will have a chance for a preliminary distribution in advance of the Conference.

THE CHAIRMAN: I might say I went to the American Consulate General the other day, and he was asking me a lot about Confederation and made reference to the Forsey papers we had before, so you made quite an impression there, Eugene.

DR. FORSEY: Mea culpa, mea maxima culpa.

PROF. McWHINNEY: When you say one volume ---

MR. STEVENSON: These are three volumes from the Spring, compressed into one volume.

PROF. McWHINNEY: Compressed by cutting them?

MR. STEVENSON: No, purely by having them in smaller type.

PROF. McWHINNEY: Excellent.

MR. STEVENSON: You will find the contents of this book are fascinating. They won't tax the reader at all.

PROF. McWHINNEY: There will be no disagreement with these reports.

MR. STEVENSON: Secondly, the special issue of *Le Devoir*, supplemented by

one or two other articles from the English speaking writers, is now well in the state of translation. I think about three-quarters of the articles are now translated. We are getting them checked and typed as they come in, typed up in our own typing pool, and they will be run off in a very inexpensive form in a limited quantity in our own printing room.

PROF. BRADY: How are they being printed?

MR. STEVENSON: Somewhat like the style of the Advisory Committee papers in the Spring. We do not intend, at least at this stage, to have anything more formal in the way of publication; but I think what we intend to do is see what the reaction to a very limited distribution is at this time, before deciding on any further distribution or spreading around.

PROF. McWHINNEY: It is not a commercial publication then?

MR. STEVENSON: This one is published by the Queen's Printer of Ontario, although the form printing work was done by Copp Clark, which was the lowest out of a number of tenders.

DR. FORSEY: Union shop, I hope.

MR. STEVENSON: I think so. In fact it is, Gary, is it not?

THE CHAIRMAN: I am not sure that, as with the brewing industry, it contains the union label, however.

MR. STEVENSON: The other papers, of course, are prepared under the label of the Civil Service Association of Ontario, which some people call a union and others people call a company organization.

For a brief report on the status of preparations for the Conference, although I think Mr. Clarkson is probably in a better way to describe some of the preparations, first I think we showed to you last time the floor plan of the Toronto-Dominion centre. This has certainly been confirmed, although there were some brief doubts about a month ago as to whether or not the size was sufficient. We internally were particularly happy with the site, I think, because it affords a maximum of convenience to the delegates themselves and the maximum of excuses to restrain the communications media from dropping all over the conference room.

We felt we had come to a very happy arrangement a couple of weeks ago, by having closed circuit television in the conference room, making the proceedings available to the 55th floor, where all the communications media people would be. We thought at that time

that the television people had firmly told us that it was physically impossible to televise the proceedings in such a small room, without putting in so much light that it would disturb the Conference delegates, and they just didn't have, they told us, sufficient technical capabilities of getting the type of camera up to the 55th floor that would be required for this kind of show. However, all kinds of physical impossibilities can be overcome if there is a will, and we found out later that there was a will.

The way it is now, the Conference room itself, which holds approximately 270, 280 people, will include all the delegates, sitting up, first, around this horseshoe shape table. The Premier will be there, with possibly a co-chairman. A second horseshoe ring around will have room for two senior advisers for each Premier. Behind him again there will be room for an additional 30 or 40 delegates, making a total of close to 80 delegates who will be up behind the Premiers themselves.

Then in front of the Premiers and facing them will be space for remaining delegates and some observers, up to a total of 142 seats altogether for delegates and observers in the Conference Room itself.

We expect from our present soundings that there will be perhaps two or three in excess of 100 delegates. In addition to that, of course, there are formally confirmed federal government observers, and Mr. Robarts has asked that there be provision made for a select number of general observers from outside.

2 Behind these delegates, there will be a bank of cameras which will effectively, some people tell us, prevent people behind them from having much of a view, and also prevent any noise or walking around in the background or disturbing any of the participants in the Conference itself. The CBC will be having three television cameras in that row right behind the observers. These cameras will be used both to film the Conference itself for probable making-up of special shows after (we doubt very much whether there will be any live television coverage although this is still a possibility); and also to provide the mechanism for the closed circuit television which will be beamed into the lounge next door for any surplus of delegates or observers, and into the 55th floor where there may be additional communications media people. Behind these cameras there will be seats for a number of representatives of press and radio stations.

The idea now is to permit only one member of any organization to come into the Conference room itself, up to, of course, the limit of the seating capacity of this back area. We feel right now that with up to 120 seats in this back part of the room, there should be no problem about this limitation to one per organization. I think some of us would prefer that this number be considerably smaller, and this may be possible if we get a considerably smaller number of organizations. At least we have this no-more-than-one-to-an-organization rule to provide a maximum.

Other communications people - there was an arrangement that photographers would only be allowed into the room perhaps for a ten or 15 minute stretch at the very first session and then perhaps at the very closing session on Thursday, so that there would be no flashing of bulbs and this kind of thing during the session itself.

The television people also have to work under a set of lighting which will be provided by the Government. The lighting is now being installed and tested so that there will be no possibility of glare or heat discomfort from the heat set-up there, even if it may provide too low a lighting for the CBC people's desires.

I hear the statement that everybody might be in a fog, but we are thinking of having

a "no smoking" rule in the Conference room. strictly applied. We have also had additional air conditioning equipment put in so that the numbers in the room again would not interfere with general comfort.

In addition to the people that we have mentioned, there will be, of course, a simultaneous translation booth, and space just off the side of the main room for some secretariat activities or administration people, to make sure that there is not disruption by people walking in and out, to handle any messages, this kind of thing.

As I mentioned, there still will be room for any surplus in the lounge next door, and we will try to keep any conglomeration of press people from the 54th floor itself. Essentially only those people who will be in the room will be on the 54th floor, with the rest of the press and communications people up on the 55th; although facilities will be made available, if Premiers so desire, for a special interview in the interview rooms which are on another part of the 54th floor.

I think that covers a good bit of the physical arrangements. As far as delegates are concerned, we did a check this week of all provinces on what their indications were at that point of number of delegates and who the

delegates would be. I might ask Gary perhaps to give a quicker summary of this. Perhaps, Gary, you might want to just say briefly how we arrived at up to 110 people.

MR. POSEN: Well, I telephoned around to the various provincial capitals this week, and we discovered that Nova Scotia is bringing 15 delegates, Prince Edward Island 8, Newfoundland 6; I think Alberta, 6; only 4 from Manitoba. We have no communication from New Brunswick, Saskatchewan or B.C., but expect that their delegations will be in the neighbourhood of 6 to 8 each. Quebec is planning to bring 15 people, and Ontario (including the Advisory Committee) will probably be around 30. This will give us in the neighbourhood of a hundred to 110.

MR. STEVENSON: You might be interested to know that the Federal Government has got in by the back door, in that one of the P.E.I. delegates is Heath McQuarry, a Federal member.

THE CHAIRMAN: Not the Federal Government; you mean the Federal Opposition.

PROF. SYMONS: Most interesting. Has Heath McQuarry been named an official delegate?

THE CHAIRMAN: He is delegate of the Premier of Prince Edward Island.

PROF. McWHINNEY: It is bi-partisan, though, the P.E.I. delegation?

THE CHAIRMAN: Not only bi-partisan, but Federal-provincial.

PROF. McWHINNEY: May we ask for enlightenment. You used the term "delegations". Actually you are really speaking of total numbers attending from each province in whatever capacity. Is there a breakdown of which number will be political, if you wish, parliamentary representatives or Cabinet, and what number will be fonctionnaire?

MR. POSEN: I have a rough idea of the six from Alberta - three and four.

THE CHAIRMAN: 3 and 3.

MR. POSEN: 3 and 3 are political people. In Newfoundland I think it is 2 and 4. In P.E.I., 3 political; 5 non-political, a few of them ---

MR. STEVENSON: Including university people.

MR. POSEN: Right. P.E.I. is bringing a professor from St. Dunstan's and members of the staff; Newfoundland, the Vice-President from Memorial University and President of the Newfoundland Teachers' Federation.

PROF. McWHINNEY: The P.E.I. delegation will then be the Premier, federal

Opposition member ---

MR. POSEN: Minister of Education.

MR. STEVENSON: Two civil servants.

DEAN LEDERMAN: Who is coming from Newfoundland?

MR. POSEN: The Minister of Justice; Mr. Smallwood.

PROF. McWHINNEY: But in the strict sense only the political people will be what you would call delegates, having speaking rights?

MR. STEVENSON: No, I think Mr. Robarts' invitation was very clear, that the composition of each provincial delegation was entirely up to the head in each provincial government, and it could include politicians, civil service and outside advisers, all of whom as far as we are concerned are considered as part of their delegation.

PROF. McWHINNEY: And competent, as for example the Heath McQuarry case, competent to speak for the head of the delegation?

MR. STEVENSON: If the heads of the delegation so desire, although we expect in the proceedings themselves the Premiers themselves will cover almost all of the conversation, although we have said that if the Premier so desire on any particular agenda item, he may designate one of his delegation to speak on that particular item.

DR. FORSEY: There is no question that all provinces will be represented?

THE CHAIRMAN: No question at all.

MR. STEVENSON: Although with Manitoba there is a problem in that, as you realize, the new leader of the Government will be only chosen on the Saturday prior to the Conference. They have said that in the interim their provincial Treasurer, Garnet Evans, will head the Manitoba delegation; but the new leader may decide at the last minute to attend anyway, and they asked us to leave that unsettled until the final minute.

DR. FORSEY: I was a little anxious when you said that New Brunswick had not indicated its delegation. I would be very sorry if they were not represented. It seems to me Mr. Robichaud is a responsible person we should have at this thing.

MR. STEVENSON: Mr. Robichaud is in, along with Mr. Thatcher.

DR. FORSEY: I should have a special Te Deum for the fact that we won't have Mr. Van Horne.

PROF. McWHINNEY: Is there any official word on the Quebec delegation? Even a day ago they were discussing making it bi-partisan, with Mr. Gerin-Lajoie and Mr. Lesage.

MR. STEVENSON: No final word on this; similarly there is no final word on the Ontario side as to whether Messrs. Nixon and MacDonald might come along as observers. This, I think, has to be settled very soon. In fact it may come up with Mr. Robarts here.

PROF. McWHINNEY: Only the Premier really, or the head of each delegation has the right to speak or to allocate speakers? There will be no right of Opposition ---

MR. STEVENSON: I think we have decided quite early it could become quite chaotic if any one of 110 delegates could speak on any subject at any time.

PROF. McWHINNEY: Or Opposition member of the one delegation.

MR. STEVENSON: Right. A few other technical things. Registration will be at the Royal York Hotel on the Sunday preceding the Conference and also on the Monday morning. We hope to have as many people registered as possible the night before so as to eliminate jams on the morning of the Conference. There will be registration cards made out a little differently for communications media people, delegates and observers.

Those of you who will be coming from out of town, I hope you won't mind making your own reservations at the Royal York Hotel, if

you want to go to the Royal York, that is. We do have a number of rooms set aside for delegates to the Conference, and if the Conference is mentioned when you do make a reservation there will be no difficulty at all.

DEAN LEDERMAN: I take it there is no objection if one prefers another hotel?

MR. STEVENSON: No problem at all. It is just that the Royal York was picked partly because we had booked their facilities for the Conference at the outset.

DEAN LEDERMAN: Having confirmed the reservation for the Park Plaza, I would prefer that.

THE CHAIRMAN: Is it the word "Royal" you object to?

PROF. MEISEL: No, "York".

MR. STEVENSON: The only thing about the Royal York is that I suppose the after-Conference activities may be more interesting insofar as there are informal get-togethers of one sort or another.

DEAN LEDERMAN: I am sure I can find a friend's room.

MR. STEVENSON: It is planned that on all four days of the Conference a buffet lunch will be served in the 54th floor dining room. It was thought that to attempt to

get out of the building to some other place for a formal lunch would take up too much time. If delegates were left to fend for themselves at noon hour in perhaps the most restaurant-short area of Toronto, it might be too awkward for time and nerves; so there is a very handy arrangement for all food and refreshments and so on right on the floor itself.

So far in a tentative way there are receptions planned for delegates on the Monday evening, with a dinner for delegates held up on the 54th floor. Tuesday evening, a reception only for those who wish, at which the press might be present also. However, we wanted to leave Tuesday evening free as much as possible, perhaps for a special get-together of the Premiers themselves; and Monday evening also if the Premiers wished, after their dinner, to get together. Wednesday evening would be the only really formal affair, where there will be a dinner in the ballroom of the Royal York sponsored by the Lieutenant Governor of Ontario for 750 guests, which would include the people at the Conference plus the members of the Ontario Legislature and a number of outside people.

As far as the agenda is concerned,

I think you have all received the agenda as it existed a week or so ago. We have relatively little change in the form of the agenda that was sent out to the other provinces, that is being sent out right now. The only main difference is that it is now bilingual and it now is typed on the Conference letterhead, which you may see is ten maple leaves, three red, three blue and four white in the centre.

PROF. BRADY: Are there any extra copies of the agenda?

MR. STEVENSON: Yes, there are. We were a little reluctant to send them around right now, because there are still a couple of typing errors that have to get picked up, but they will be sent out on Monday, together with background papers on the themes which we have been working on over the course of the last week, which are now in pretty final shape. We attempted in these background papers, one of which is on the goals agenda item, the second on the language question, the third on the ways of improving the system, particularly Federal institutions, method of approach, the fourth on the machinery question with, I think, a separate shorter paper on options; we have tied in these papers to be as objective as possible, raising questions rather than answers,

putting forward issues.

Naturally the goals and language and options papers had to be somewhat more general in tone than the ones on machinery and methods of approach to change in either the formal or informal position. The latter two are much more descriptive in the sense of describing current federal-provincial and inter-provincial relationships and describing some of the proposals we made for change in them. With that, I think we have pretty well covered most items that have been dealt with.

The planning committee of the Conference has been meeting under Mr. Clarkson's chairmanship about two times a week at least for the last month now. The big thing that has taken up the last two or three meetings, of course, has been the vexing problem of changing attitudes towards the communications media.

PROF. CREIGHTON: Mr. Chairman, for clarification, I gather that the members of the Advisory Committee are all members of the delegation of Ontario, and are therefore delegates to the Conference. That is right, is it? I suppose that the natural desire of every member of the Committee to attend the sessions may perhaps be frustrated by other obligations. My main teaching duties, for

example, at the University of Toronto, come in the first days of the week, and I will be fairly restricted, I think, unless I abandon all my classes - and this is something, of course, that is of no concern of the Department making the arrangements but just happens to be true, that is all.

THE CHAIRMAN: I think we will certainly understand any difficulties of that kind.

PROF. CREIGHTON: We can come when we can?

THE CHAIRMAN: Certainly. There will be proper passes.

MR. STEVENSON: Yes, Mr. Chairman. I would think, if it is acceptable to the members of the Committee, that the probable seating place for most members of the Committee would be in these delegates-observers area right in front. We felt it might be a little awkward to have behind the Premiers' places 30 people from Ontario and no more than 15 from any other province; so with this in mind we felt that perhaps the Advisory Committee members were in a somewhat unique position, and that this space in front of the Premiers was perhaps the most logical place for the members.

DR. FORSEY: I think it is a wise provision. Otherwise the choice of the

Toronto-Dominion centre might seem to have a symbolic significance.

MR. STEVENSON: One other thing, talking about symbolic significance that I should have mentioned was that the chair in which Sir John A. MacDonald sat at the Charlottetown Conference is being sent up from Charlottetown.

DR. FORSEY: You should have the chair in which Mercier sat in the Conference of 1887 or that Mowat sat in at the same conference.

PROF. CREIGHTON: It has been proposed to me that there will be at the Conference a prayerful two minutes silence for those great defenders of provincial rights in the past.

DR. FORSEY: I am afraid I am in a somewhat ribald frame of mind this morning.

THE CHAIRMAN: Stewart, have you any other observations about the media?

MR. CLARKSON: No, not at this time.

MR. STEVENSON: I hope that interpretation was correct. We have all been interpreting what the decisions have been, what the final decisions have been for the last three weeks, and we found often that our interpretations were over-ruled next day.

MR. CLARKSON: Final decisions change

from time to time, yes.

THE CHAIRMAN: Very interesting exercise in group dynamics.

MR. STEVENSON: One final technical arrangement that Ed has reminded me of. I think particularly Professor Creighton, for you and others that may have difficulty in attending all the sessions, it might be easiest for you if you were to register on the Sunday evening so that you can pick up all the Conference documentation at that time and then be free to come and go as you please later on in the week.

PROF. CREIGHTON: Thank you.

MR. SEGUIN: Will the registration desk be open at all times because, for instance, I won't be there before Monday late in the afternoon.

MR. STEVENSON: Yes, there will always be a registration desk on the Conference floor.

MR. POSEN: On Sunday the registration desk will be at the Royal York, and Monday it will move to the 54th floor of the Toronto-Dominion centre. There will be someone there all day. One could pick up credentials at the Toronto-Dominion on the Monday.

MR. SEGUIN: Right.

MR. POSEN: The only thing is if everyone waits till Monday there will be a big day there.

THE CHAIRMAN: It will certainly be essential to have your credentials, because there is going to be fairly stringent security.

MR. STEVENSON: This is the beauty of the Conference site that the number of the people on the floor may be controlled through the use of delegate badges, and the fact that there are two elevators in the Toronto-Dominion Centre that will be used exclusively for the Conference, and it may be difficult to get up on to the floor without some proof of reason for being there.

MR. SEGUIN: The registration desk will be put in the lobby?

MR. POSEN: No, after Monday, anyone, I think, can get up the elevator but they won't be able to get past the registration area.

PROF. CREIGHTON: Where is the registration area, up in the Royal York and then in the Toronto ---

MR. POSEN: Then on the 54th floor.

THE CHAIRMAN: Our colleague, the Chairman of the Hydro-Electric Power Commission of Ontario, has assured us that he won't start one of those brown-outs, as they are called,

during the time that we are either at the foot or at the top of this mountainous edifice.

DR. FORSEY: If the power comes from Quebec though, you had better clear the thing with Mr. Johnson.

THE CHAIRMAN: Then so much for item 2. Item 3, I would certainly like some discussion on, and, more than that, some guidance as to the procedure we might take in our discussions with the Prime Minister, to make the best use of his time and of yours. I presume you will have some questions you will want to ask him about his thinking on both arrangements and positions, and that our main interest will be to look, as it were, at the position, I think, that the Prime Minister of Ontario will find himself in at this Conference, and to discuss the approach, the position that this Government might occupy at the Conference.

PROF. McWHINNEY: This paper, if I may say so, Mr. Chairman, was very helpful - the Prime Minister's speech on August 9th which you sent to us.

THE CHAIRMAN: The Montmorency Conference?

PROF. McWHINNEY: Yes, it brings together in very convenient form his prevailing

philosophy. The thoughts on the economic policy, I thought, were especially helpful - very clear, very concise. I had the feeling there was good work done by some silent people.

I wonder, is the agenda subject to change in mid-passage, so to speak? There have been already editorial suggestions, both in B.C. and certainly in Quebec, that the title of submarine oil should be discussed about economic matters too.

THE CHAIRMAN: This was the point that I would appreciate if you would bring up with the Prime Minister and I think he should be thinking about; because the question is: should he rigourously adhere to the agenda, which has the obvious advantage of keeping the Conference on the tracks that are intended for it, or, if people bring up, as I would suspect is inevitable, a specific issue such as off-shore mineral rights or other things that are "hot", then there is a danger that this could become a kind of provincial political battleground with the Federal Government not there.

PROF. McWHINNEY: I think you did a fine job, if I may compliment again the Secretariat here. I thought our discussion on the agenda at the last meeting was fully digested by the Secretariat, and that the

revised agenda, I think, met virtually all the points made in this discussion.

However, I notice again you do not have very much of an economic character in the agenda, and that was a deliberate decision before, but I suspect there is going to be pressure for bringing in the issue of tax allocation - either granting of tax powers as such to certain provinces or adjustments within the Tax Structure Committee and the like.

Of course the off-shore oil thing has a very definite economic implication. The advisory opinion of the Supreme Court may bring the fullest pressure for change in this area. Mr. Robarts has the good fortune to have had a fairly sophisticated position developed on economic matters other than off-shore oil, so that I don't suppose this would phase him if it came up.

MR. STEVENSON: Mr. Chairman, there are a couple of spots we might look at. One is the question of ways of improving the system, where reference is made to other constitutional matters. The second, I think, is in the whole question of options, where one is talking about making the modern system more specific, more clear-cut, eliminating grey areas, this kind of thing.

One other thing on the agenda itself,

I have a personal feeling that the way we have it now with the last half-day devoted very vaguely to priorities of future Conferences, and the second last half-day on Federal-provincial machinery - I have a feeling that it would not be a bad thing at all if perhaps some of the broader and more important topics contained on the first three sessions were perhaps to spread a little and even use up the half-day cushion that we have; because the final half-day spent on both machinery and future conference would be not undesirable to my thinking.

PROF. MEISEL: Mr. Chairman, there is a related point. I think that we should think, the Premier should think ahead of time about the particular topics that should be deferred for future conferences. In other words, I think some decision should be made before the Conference starts on the kind of things that are satisfactory as being suitable subjects for future discussion.

PROF. BRADY: It is referred to in the last, "Priorities of future conferences".

PROF. MEISEL: But I think Mr. Robarts should in his own mind (the Chairman can answer me) should have a pretty good idea of the particular topics that ought to spill over, that one ought to continue discussing;

so that when this comes up he may at some point have to say: "Let us not pursue this particular point any further. We need some work done on this. Perhaps this might form the subject of another conference."

THE CHAIRMAN: John, do you have any opinion, or do any other members of the Committee have an opinion, on this problem which we have discussed, if I may go back a step for a moment? You recall that for better or worse we got into the business of arranging this Conference because we felt that a forum had not been created for discussing the fundamental question of the direction of Canadian federalism.

Now, we have also said that in our view this should be only the first and the opening-up of the whole issue, and that presumably a further conference would be required of a specific nature.

Now, I would think it quite likely that the question will come up: "Should this future conference be of this inter-provincial character we now have, or should there be suggestions made to the Federal Government, senior government in the country, to convene and to take on the responsibility?" I think we will want to be prepared for that one, because it affects the future conference.

PROF. MEISEL: I think this should be left as an open question. It seems to me that this Conference has already achieved one very important result. We have been noticing for some years now that the Federal Government has not felt it possible to consult the provinces genuinely before meeting with them on various problems; and this Conference has really taken the initiative from them, because of the fact that they have failed to do this. I think never again is the Federal Government going to be in the position, not for a long number of years now, to take unilateral action and confront the provinces with a series of faits accomplis, without doing this kind of preparatory consultation.

I think the position that ought to be taken now is that we say: "Well, we don't care who calls the conference really". We are not as narrow-minded perhaps, as some people on the subject. If there is a need for a conference to be convened and the Federal Government does not convene it, the provinces can do this again. In other words, I wouldn't say: "Well, we won't ever call one again like this. We will try to work with the eleven governments"; I think this should be left open.

THE CHAIRMAN: I would think the

other dividend it pays is that never again, I would think, would the Federal Government be able to afford not to take the initiative.

I think this opens up the two sets of flexibilities here which are very good. One that crossed my mind is whether at some stage the Premiers might not discuss the possibility of reviving their own annual meeting and giving it a little more life so that they come together and discuss whether or not to call a conference - a kind of steering committee of provincial Premiers.

PROF. McWHINNEY: Mr. Pearson certainly suggested in the last two weeks that this will be a sort of continuing thing, provincial Premiers' conferences. I had the impression that this was a unique - I am aware that the provincial Premiers have met before, but in the circumstances of the case I have the impression that this was rather a unique conference called by Mr. Robarts because of these constitutional discussions. But Mr. Pearson certainly mentioned it; he mentions the precedents of the provincial conferences that he has not attended, and I take it it is an established general principle now that it is perfectly proper for the provinces to meet if they wish and have the business.

PROF. MEISEL: The fact is this Conference is not designed to arrive at any policies. It is a "clear the air" type of conference and that is very useful; but ultimately no doubt the governments will want to make some decisions, and those conferences cannot be held without the participation of the Federal Government, and presumably some of them will certainly be called by the Federal Government, should be; but the question is: do you want to have future conferences which are designed to sort of discuss general background situations rather than concrete policy decisions? If so, should the provinces call them or should the Federal Government? I don't think they can make a decision until they know what has happened after this Conference.

THE CHAIRMAN: I don't want to cut off any point here, John, but I am watching the time, and I want to get some other things ready for us to talk to the Prime Minister about.

We have talked about the question of controversial issues that may come up. We have talked about the future conference question. The third question, I think, and a major question which you might care to raise with him or discuss with him, is undoubtedly the delicate place that Ontario will find itself in on the whole question of biculturalism, bilingualism, two societies, etc.

We know, without any fear of contradiction, that the most westerly provinces are going to make a very direct pronouncement on this question; that on the other hand Quebec will have a known position of a different kind. Ontario, New Brunswick, Manitoba have done certain things in this realm, and my impression would be that a very heavy responsibility will devolve upon the Prime Minister of Ontario in this particular situation. I would like any thoughts you might have here.

PROF. SYMONS: Mr. Chairman, I am interested in the large size of the delegation from Nova Scotia, but more so in view of the recent changes in the leadership of that province.

I wonder if there are any indications that they perhaps have a point of view that they are eager to put forward, if some specific degree of interest is reflected in the size of their delegation. I find it surprising a little, and certainly very encouraging, that they should be sending such a strong delegation following upon a change of leadership.

THE CHAIRMAN: Mr. Greathed paid the visit to Nova Scotia.

MR. GREATHED: I might say that

when I was talking with the officials in Nova Scotia, they indicated that they were interested in sending a very strong delegation. They didn't indicate it would be as large as 15. In fact my impression was it would be more between 6 and 10.

But one of the specific comments that was made, was that they didn't want to let Mr. Robarts' conference down, and they wanted to show their great interest in the Conference by supporting it as strongly as they could. They gave a series of hints that they were looking at the question of bilingualism in the schools, the possibility some of the schools in certain communities like Clair County in Nova Scotia - the provision of French Language schools there; but I gather they were being very cautious about this and I gather there was a committee under the Deputy Minister of Education which was looking into this. I don't know whether they will be prepared to make any firm statement about this at the Conference itself.

PROF. McWHINNEY: Bill Lederman was there and others of us, and the interest is tremendous. They organized, I think, the only sophisticated university conference on Confederation two weeks ago, and they paid all their expenses and really financially helped

the delegates from all over Canada, students as well as professors from every law school in Canada, and they all came. The interest is tremendous. I think, Bill, I was tremendously excited by that conference, and by the tremendous enthusiasm of the students.

DEAN LEDERMAN: This was a Dalhousie Law School enterprise with this Centennial Commission grant.

PROF. McWHINNEY: A very modest one.

DEAN LEDERMAN: I didn't learn about the size of it.

THE CHAIRMAN: I might add also, a modest grant and support from the Government of Ontario, at the request of the Prime Minister of the Province.

DEAN LEDERMAN: That is right. This was acknowledged.

DR. FORSEY: My guess would be that the size of Nova Scotia's delegation may reflect the fine renaissance hand of Robert Stanfield, who cannot be present himself, and it would seem to me a natural thing for him to want to keep in touch with the proceedings rather closely through some of his late colleagues. I presume his relations remain rather close.

PROF. FOX: He may just want the trip to Toronto.

DR. FORSEY: I resent that as a matter of -- (laughter).

THE CHAIRMAN: They may be fortifying it by some of the residents of Sydney.

DR. FORSEY: Perhaps they want to do a bit of business with Toronto business for Sydney residents while they are up here.

PROF. MEISEL: Mr. Chairman, it seems to me that there are two aspects of this. One is that Ontario obviously is a province that, after New Brunswick, has the greatest interest in this question and therefore must take a fairly strong position in the Conference. On the other hand, there is also the question of the tactics at the whole Conference, and I suspect it would be wise for Mr. Robarts to hold fire for some time on this question and see how the thing goes, so that he can cut his particular speech to the exigencies of the moment from the point of view of the general development of ideas, qualifying or disqualifying any part.

I am quite sure that he will play a very important role in this, because there will be a confrontation between, say, Mr. Bennett and Mr. Johnson, to put it in those terms, and at some point someone will have to come and speak for Canada; and since the Federal Government is not there to speak for Canada,

obviously it has got to be Mr. Robarts.

I mean, some other Premier may, the Nova Scotia Prime Minister may do this, but I think if no one does, Mr. Robarts must.

DR. FORSEY: Mr. Robichaud might.

PROF. MEISEL: Yes, although he has a special case to plead also, does he not?

DR. FORSEY: It is essentially a Canadian case.

PROF. McWHINNEY: Your mechanics of your meeting, Mr. Robarts is going to preside, correct, and when he speaks he will do so as presiding officer?

THE CHAIRMAN: Well, the present plan - and he may well have finalized his intentions and the necessary approaches in the last twenty-four hours - I think his intention is to preside at the opening and closing sessions, but to have a neutral Chairman preside at the intervening sessions, so that he is free to speak to the debate.

PROF. McWHINNEY: What does that mean? It becomes terribly important. Does it mean it will rotate among the Premiers?

THE CHAIRMAN: No, a neutral Chairman.

PROF. McWHINNEY: What does that mean, a political figure?

THE CHAIRMAN: Well, it is something

you might care to raise with him, because I am not sure how far he has progressed.

PROF. McWHINNEY: I think John Meisel's point is a very basic one. If the Premier decides tactically his role is essentially -- I think in some ways this suits his own personality - to listen a great deal and apply a moderating influence, then it is so much better as presiding officer, and I do not think anybody would insist, in the parliamentary sense, that he leave the Chair when he wants to speak.

6 In other words, unless it is a parliamentary body, he could, as presiding officer, make this sort of combination, and it means that he controls the dynamics of the meeting. If he does not, and you get a Chairman who is not, let us say, as sophisticated or who doesn't have the political power behind him, you could have a football being kicked around, and it is one way of opening up issues, but I think it is one of the things that encourages the dramatic confrontation and the walk-out. So I am not saying he should not be president, but if he is not president throughout he gives up an important control mechanism in terms of the political temperature of the meeting and the like.

THE CHAIRMAN: These observations

could well be very timely, so I think I would like you to discuss those with him, if you would.

MR. STEVENSON: There is this, Mr. Chairman, that if there is to be a neutral co-Chairman to look after the middle sessions, and perhaps everything after the first, then we would expect to have internally with him some very close collaboration in the week or so preceding the Conference on what would be expected from this end as to the way it might go and what we would hope the Chairman might do in terms of guiding the discussion.

PROF. McWHINNEY: Let me put it again more practically. In the U.N. you don't necessarily regard it as a disaster, with the president elected each year, if somebody walks out; but it may well be in this particular instance that somebody with Mr. Robarts' prestige, if there were a frontal clash between Premier Bennett and Premier Johnson - which is quite possible on the schools issue in view of the very apparently provocative statement by Mr. Bennett on the west coast, I think that somebody with Mr. Robarts' prestige could get the two Premiers to calm down. This is a danger I see with a neutral president who may not have enough prestige.

If what you want, however, is an

U.N. General Assembly style discussion in which you say that it reflects the temper of the country if people walk out and say "I am going home", that is another matter. I think this issue of the internal mechanics of the meeting becomes crucial in terms of the final outcome, and since Mr. Robarts has the right to preside I think he should be very cautious about giving this up until he has explored the consequences.

DEAN LEDERMAN: Mr. Chairman, I can see that you cannot expect too much of any one man. Now, Mr. Robarts has the task of speaking for Ontario; he has the task of speaking for Canada (we have agreed that he is in that position too); and also the problem of moderating the Conference, if he is Chairman in addition to being spokesman. It does seem to me that there is some sense in separating these two roles. After all, if Mr. Robarts is needed as a peacemaker, he can rise to a point of order or point of procedure, can't he, with a neutral chairman or another chairman. So I like the idea of freeing him for most of the sessions from the job of being moderator, to use the term that is used in some church circles.

PROF. BRADY: I would agree with Dean Lederman in that thought. Mr. Robarts is present, after all, in the discussions, and

if some cooling act or words are required, he is present to provide them. I think it would be a strain on him to be presiding throughout the whole conference, and it perhaps would inhibit him a little in discussing matters within the Conference.

It is true, as you say, that as Chairman he need not be bound too rigidly by parliamentary rules of chairmanship, but I think he would feel a bit inhibited, and I don't think he should feel inhibited; he should be free for a good part of the period at any rate to discuss things like other Premiers present.

FATHER MATTE: The trouble would be to find the man with the prestige to chair that Conference. Do you have any ideal? It is very difficult. I would prefer, like Professor McWhinney, to see Mr. Robarts sit in the Chair the whole Conference through.

MR. MAGONE: Mr. Chairman, where would you find a neutral Chairman? Isn't that a real problem?

PROF. MEISEL: I presume in a moment we shall find out who he is.

PROF. McWHINNEY: I think all you can do is really explore the consequences of one or other action. I agree with the weight of what Bill and Alec have mentioned.

I am simply saying what seems to be a simple, innocent decision of internal procedure or adjectival law, that you see in the end really controls the substance of what goes on.

I think the Premier should have the two alternatives posed to him very clearly, to make a decision after a little bit of thought, because I think it will materially alter the nature of the Conference, depending on which role he sees for himself.

I don't know that we make the arguments either way. One is in effect a U.N. General Assembly type of meeting, and the other is much more a conference of people with some sort of common interests.

THE CHAIRMAN: Well, as I said, I don't want to exhaust the conversation on these items, because this is a point I would like you to take up with him. Are there other points you feel of substance that we should take up?

PROF. FOX: I think it is essential to have some concept of what may occur in future after this Conference. In other words, I think you cannot have the last session as a let-down to the proceedings that have gone on in the previous three days. It is very important psychology of the whole thing that you have something to look forward to. Then

if any member is disappointed with what has gone on, at least he can look forward to something later on.

I think this means that someone has to talk clearly about the possible choices for future activity, and it may provide a function of the Ontario group to have some idea in mind to propose, and it would be quite fitting for Mr. Robarts as the host of this Conference to make any suggestions of that kind.

PROF. McWHINNEY: Incidentally, one other question is really what you want the Advisory Committee to do. I think all of us appreciate the very generous decision Mr. Robarts has made in inviting us. I take it we would all feel available if he wanted some urgent breakfast meeting or something.

THE CHAIRMAN: He has said there will have to be continuing discussion and consultation in between to assess what in fact has been said and what it has meant and what it implies for the next step and so on. We will have to.

PROF. McWHINNEY: When would you do that? You mentioned these buffet luncheons and they would be public affairs really.

MR. STEVENSON: One thing about a buffet lunch is that the Premiers can be as

private or as public as an individual delegation or Premier wishes. If the Premiers wish to go outside to have lunch together, they can have it in the President's own office. If a delegation wishes to get together, this is a little more difficult, but it could also be done at lunch time.

PROF. McWHINNEY: You mean there are ten or eleven caucus luncheon rooms, there are these facilities?

THE CHAIRMAN: Yes, very good facilities in this department.

MR. PERRY: Mr. Chairman, I was going to suggest with regard to future conferences, that it seems to me it will be more a question of the form that they should take rather than the subject matter. Surely no one expects that we are going to come to any sort of finality on any of the subjects that are listed for this Conference, in one conference. There are items that will end up with a complete carry-over in this subject matter. So that then the really important factor is in what sort of environment this carry-over is perpetuated in the future? Another conference of the same type with the addition of the Federal Government? Different type of conference, provincial people; study groups, or what-have-you?

DR. FORSEY: This Conference may not have this entirely in its own hands, because, after all, unless my recent practices have prevented me from following some special development, there is to be a conference called by the Government of Canada early in the new year.

THE CHAIRMAN: On the Bill of Rights.

DR. FORSEY: On the Bill of Rights, and all the rest of it, and this may upset a number of applecarts, and it may very well be that after that has been held the question of the future conferences, who will convene them, where they will be held, what will be discussed, will be radically altered. I don't know, but it seems to me quite possible.

DEAN LEDERMAN: It seems to me, Mr. Chairman, that this type of conference, this particular Conference, is going to serve a most useful purpose at this juncture, but you cannot go on and on with this type of conference. I think if you are going to have a negotiating conference of any kind, the federal authorities must be present in a full-fledged way. So I would envisage that this conference would make proposals to the Federal Government, exhort them to arrange a series of conferences along a certain plan, or pinpoint some things that need the attention

of a full-fledged federal-provincial conference - and await their reaction.

THE CHAIRMAN: All right, there is one other matter that we have been discussing here and I would like you to discuss a bit with the Prime Minister. That is Ontario's opening position. Now the dilemma as I see it is this, that on the one hand we have called this Conference for the purpose of discussion and examination of issues on hand, and we do not want people to start by being locked into positions and creating a confrontation of positions and so on. On the other hand, there is always the continuing implied criticism, I suppose; "What does Ontario think? What is Ontario's position? What is Ontario's stand?" etc.

Therefore we have been discussing quite a bit, in the opening remarks that the Prime Minister makes, should he confine himself to the merely descriptive account of the Conference and his expectations for it, or should he go further in terms of laying out a little more substance on behalf of the Ontario Government?

DR. FORSEY: If he is going to state an Ontario case at all, it seems to me that his statement rather along the lines of the speech he made at the Montmorency Conference would be

very suitable. That, it would seem to me, was not too detailed, but nevertheless made plain certain basic ideas which the Government of Ontario appears to have on this matter, which seem to me very suitable and sensible. He wouldn't want to say exactly the same thing, but the same kind of statement, it seems to me, would be useful - coupled, perhaps, with something of the sort you have just suggested about expectations of the Conference. I think it would be a little odd if, starting in, he did not give some idea what the Ontario position was, but it could be brief and not go into any particular detail.

PROF. McWHINNEY: Even though the agenda excludes the economic aspects, it seems to me the economic matters he discussed in his Montmorency speech are the key to his general philosophy. I would say something of this general character is absolutely desirable and is perfectly appropriate too, and I think it would be just what would be needed.

I would agree with Eugene, I think it is the best speech of this nature by Mr. Robarts, because it all fits together; it develops a coherent philosophy without the disadvantages of getting into too many details at the start but yet it has enough meat in it.

DR. FORSEY: The only thing that frightens me is that bit about joint decision-making.

THE CHAIRMAN: I was wondering if you would raise that.

DR. FORSEY: I noted that with some asperity, and I have not changed my opinion.

PROF. McWHINNEY: I think this comes on page 7, you know, the discussion of the provinces and the municipalities and densities; and then the reference to the extent to which I think he mentioned four communities - Government of Ontario, Quebec, and Metropolitan Toronto, Montreal, and the Hydro, really having a significant - 80 per cent, I think he mentioned, of public investment in Canada. These are such dramatic facts they make it meaningful, it seems to me; but basically he gets into a constitutional relationship, because in effect it demonstrates very clearly the relativism of constitutional conformation by economic facts.

DR. FORSEY: That precise passage leads up to this extremely dubious venture into constitutional space about joint decision-making. I just still do not see how you can possibly get this colossal going around the table by making joint decision; and if you succeed in doing so, it seems to me fundamental that you might just as well seek

asylum elsewhere and the rest will stay in the asylum here.

PROF. McWHINNEY: I think, having used the new IBM typewriter too, I suspect that what happened, these two paragraphs connecting these economic facts to each conclusion, got lost. I think it is an example, perhaps of an ellipsis rather than --

THE CHAIRMAN: I think less IBM typewriter than scissors and paste, the joint decision-making thing. For example, next Thursday and Friday the Treasurers and Ministers of Finance are going to meet, and I think the approach we are going to take will be: "Well, we have a financial problem here as well. We might be prepared to go at this. Are you prepared to go at that?". Or we might say that "we might do this first. Are you prepared to do that?" and achieving a complementarity of financial and economic planning.

DR. FORSEY: Yes, but this is discussion and consultation, and when you have gone through all this, then Mitchell Sharp has his budget and when he has got to by-pass around you chaps, it seems to me he may say at some point: "I am sorry, we can't do this. I am not going to present that kind of budget" and I think it may be his duty to

do that.

This is the point I wish to make, that consultation and discussion is one thing; joint decision-making is another quite distinct thing. But the decision finally -- "one man's hand on the lonely plough" -- your final decision by the Finance Minister of Canada in presenting his budget may well be very markedly influenced by this discussion but it will be his decision, or else he abdicates responsibility and the Government of Canada becomes a farce and the country breaks up. From my slight knowledge of Mitchell Sharp I suspect that Mr. Sharp, as long as he is Finance Minister, is not going to be told by anybody he consults exactly what is going into his budget; nor is the Government of Canada going to be told what it is going to do in tariff negotiations in a future Kennedy round or anything else. This is the kind of thing that worries me, the loose use of the word "decision-making". Consultation and discussion are one thing; decision-making is another. The Prime Minister may consult this Committee and he can come here this morning and discuss things with this Committee; but when he has finished the discussion and consulting he says: "Thank you very much, gentlemen", because decision-

making is up to him and he is going to do it.
We can't make it up for him and we have no
business to try.

PROF. McIVOR: I was just wondering
whether this expression "joint decision-making"
really means making more effective co-
ordination of policy.

PROF. BRADY: Making decisions with
a sense of co-ordination.

DR. FORSEY: Then I tire of what
I call political Humpty-Dumptyism; that
when I use the word "'joint decision-making'
it means what I choose it to mean", and they
just dig up any kind of meaning they want for
any term they want to use. So that if they
say: "This is a pink elephant with blue
spots" somebody says "Well, isn't that
interesting?" instead of saying: "The fellow
is as crazy as a March hare." If he is going
to talk about an elephant, let him talk about
something that is recognizable as an elephant,
not a glass of water.

PROF. McWHINNEY: When I raised
the suggestion that paragraphs had been left
out, at the same time joint decision-making
would cover many categories of possible action -
for example, the Australian practice of a joint
Dominion-Provincial Commission, controlled external
borrowing, could cover consultations. I think

technically it does cover a number of possibilities, and I take it there was a deliberate decision not to spell out the various alternatives at this stage and to leave the options open.

THE CHAIRMAN: It was intended to say two things. First of all, when we have a little more acceptance of these words, we have used collaboration, co-ordination, co-operation, etc.; secondly, to give some effect to the point that we had to start perhaps finding new devices and new solutions. Now, I understand what Eugene says about the words that were used, and I daresay we can find more exact ones.

MR. STEVENSON: Mr. Chairman, the last version of the agenda (not the one we have now) on the inter-provincial and federal-provincial relationship structure, we tried to bring out this very problem: Should we be aiming for more effective means of consultation or co-ordination, or should we be heading towards some kind of joint decision-making, which is almost a third level of government? I think it was felt generally that the second one was just incompatible with our parliamentary system in its most extreme form, so that the dichotomy in the previous agenda has now been softened a bit to contain what it now has.

DR. FORSEY: I am supposed to be a bit of a relic of the past and not apprised of modern ideas, but I still think that words have meanings and it is better to stick to the meaning, especially if you are dealing in legal and constitutional documents. I am no lawyer, (my distinguished colleagues can sit on this) but if you are dealing with constitutional matters it seems to me very important to be quite sure that you are saying what you mean. If you use a word in a vague and general sense, you may very well get caught in the machinery before you are done. That is all I am saying. If decision-making now means something, as far as I know, unknown to the English dictionary, the English dictionary is in the process of developing - and I believe there is a Canadian dictionary now that even admits of other tortures of the English language - all right; but if there are these changes, let us be clear what it is about. If it is going to be an elephant which is changed, let us be quite sure that we know that the elephant is now made of silica and may contain water. I don't care what you call it, provided you know what to do with it.

THE CHAIRMAN: I accept your point, Eugene, and as a matter of fact I am something of a kindred soul on this; and in case you

think you didn't make your point on this, let me tell you that when going through the background papers and the word "hopefully" came up at me, I put a great big circle around it and I said: "I can hear the voice of Eugene Forsey" and took it out.

MR. STEVENSON: All the people that went over that paper said exactly the same thing,

THE CHAIRMAN: I think we will have some coffee.

--- Short recess

THE CHAIRMAN: Well, having arranged for someone to meet with the Prime Minister over there this morning who wanted to interview him about something, it has come back to haunt me because they are still going on apparently. I think we had better go on to item 5 and make a beginning on it and then revert to item 4 when Mr. Robarts gets over here.

DR. FORSEY: We finished with 3, did we?

THE CHAIRMAN: We can go on with that if there are other points.

DR. FORSEY: I don't know. It may have been summarily dealt with.

THE CHAIRMAN: I have a note of six points that came up from pieces of

discussion. If there are any other points we can hear them. Otherwise, as I mentioned this morning, I felt we should make the main business of the balance of the day a working through of this agenda from the point of view of understanding it better and helping us to consider the type of situations that might emerge within it and thereby the type of Conference we are going to have.

Now, Item 1, the first session, the Conference opens at 10.15 and it might be useful to have some report, Don, of the kind of feelings that were expressed in our tours about the opening position which explains why we have used the term "short statement" deliberately.

MR. STEVENSON: Well, we went around originally rather discouraging the presentation of formal briefs, which is the standard practice at most Federal-Provincial conferences, when there are specific items on the agenda on which each Government is expected to have a formal position; but in keeping with Mr. Robarts' general concept that this is not a conference to which he wishes delegations will come with rigid fixed positions, we wanted to discourage hard, formal statements. When we went to the provinces we mentioned this view, and from most provinces this was

quite acceptable, and they did expect generally though, in keeping with past practices, that there might be some kind of short opening statement which might get into some of the substance of the Conference and individual agenda items, but more likely would be a rather general statement on what each Premier thought about the nature of this Conference, perhaps the whole idea of the timing of it, the basic things that you try to accomplish.

We ran into somewhat a different position in Quebec, in that they had been preparing for this Conference for some time. They had quite a large draft brief or statement from Mr. Johnson in first draft form, some 40 pages already, about three weeks ago, which was going into a great deal of detail. We had quite a long discussion about how this could or could not fit with the general concept we had of the Conference, how the agenda was broken up and the time that we had allotted to opening statements. We told them it might be quite awkward if we had a two hour opening session for opening statements at which Quebec had a statement which would last an hour and a half, and we discussed the possibility that if the Government wished to continue with this opening statement, perhaps to send it around to the other governments

first or perhaps releasing it the night before or summarizing it at the Conference and tabling it or trying to break it up so that it fitted in better with individual agenda items.

The civil servants we talked to thought this might be a little awkward because they were a little afraid of the Quebec position being taken on the specific point out of the general context, and they related some past sad experience when a summary accompanied by the tabling of a brief meant that the main points were lost in subsequent discussion.

So this presented a fair dilemma for a while, until, I think, we found that in later discussions Mr. Johnson proved to be most amicable and said that in considering the draft agenda we had proposed he felt that it might be best that the Quebec Government did not have any kind of large opening statement. So that it is quite probable now that that great document which the Quebec people had been preparing intending to be released, won't be released at this Conference at all, but that the Quebec delegation will come prepared with points and points of view on individual agenda items but probably with an opening statement which would not differ much from those of the other provinces.

THE CHAIRMAN: All right. Has

everyone, by the way, got a copy of the agenda before them?

DR. FORSEY: November 3rd, is that the one?

MR. STEVENSON: November 3rd is fine. There are a couple of editorial changes between that and the very latest, but I think it is good enough to work on.

THE CHAIRMAN: I don't know if there are any points or questions on that first session. Tom?

PROF. SYMONS: I think the essential question is: Will Mr. Robarts' opening and welcome as the Chairman double also as the statement for the Province of Ontario?

THE CHAIRMAN: I think so. That is the intention. We spoke this morning about the problem that, let us imagine we are in the conference and everyone has said their piece and there may be some item immediately raised of very sharp focus quite off the agenda. Mr. Bennett may say he wants to get some urgent discussion on off-shore mineral rights and so on. Someone will undoubtedly come out with it and have chats with the press about that, and I think immediately there will be a certain excitement created, and the question will be getting back on the rails, I would

imagine, for the cooler discussion in the afternoon - and as we look at the item at the afternoon session it is pretty philosophical. I think it may well be a little difficult getting it started. I don't know how it strikes members of the Committee from that point of view.

PROF. McWHINNEY: Are you really optimistic about finishing the first plenary session within those two hours and 15 minutes? I almost have the feeling, in spite of Don Stevenson's work in Quebec, cutting 40 pages down to something shorter, that one may be optimistic in thinking of ten minute statements by Premiers. Is it not more realistic to assume that the whole day will go in these statements or very close to it? Are you prepared for the eventualities anyway? I take it you are - contingency planning.

THE CHAIRMAN: We could go on to one o'clock for example - we have some flexibility there - but even that might not do it.

MR. STEVENSON: My feeling before, Mr. Chairman, was - this was before the Quebec position had become resolved a little more, but I felt there wouldn't be too much harm in having the first two or three sessions spill over a bit; that this might be occasioned

by longer opening statement than we had thought of. I think that out of courtesy to individual leaders you cannot cut off the session until all ten have said their piece. If they go over the ten minutes, then you have to go into the afternoon. Really, therefore, you can't get to the afternoon agenda items until the opening statements are over. Mr. Roberts himself does not want any kind of rigid cut-off given to any Premier on his opening statement. So this just may mean that things get moved on a half of a session already from the first day.

DR. FORSEY: If Mr. Johnson decides to have his new constitutional adviser make a statement, you can prepare yourself for something pretty extensive, I can warn you.

PROF. McWHINNEY: Long-winded?

DR. FORSEY: Faribault?

THE CHAIRMAN: Interminable.

PROF. McWHINNEY: In conversation, thank goodness, he is short, but as a speaker ---

THE CHAIRMAN: I would say two and a half hours might be a modest estimate.

PROF. McWHINNEY: Then in effect, really, I suppose, being realistic (Eugene just confirmed this) it looks as if the first

day may go on the statements. In a way, is there any harm in that, because I think most of the opening statements are really going to run through, if you look at Mr. Robarts' Montmorency address, they are going to run through these "what are the common concerns of Canadians in 1967"; and about the only thing you would miss, if you had any contingency planning to push the two together, would be presumably off-the-cuff comments in reply to particular statements; but I am sure that Mr. Johnson is going to talk about quality of life and linguistic and cultural heritage and economic growth, and certainly Mr. Bennett is too, from a somewhat different view perhaps.

MR. STEVENSON: What we have stressed to the other provinces though is that longer statements run the risk of cutting the ground from under some of the other agenda items, and it is pretty awkward to have an opening statement of a standard nature, say, half an hour or so, without repeating what the Premiers would like or would want to say at the outset of some of the other sessions.

PROF. McWHINNEY: That was half an hour at least, the Montmorency speech. 26 pages at my rate of reading is half an hour.

MR. STEVENSON: It is 50 minutes

for me.

PROF. McWHINNEY: How can you say much less than that in your Ontario statement, unless it is going to be "Welcome to the Confederation of Tomorrow Conference" and a few general remarks of that sort?

PROF. BRADY: Surely, Mr. Chairman, you must assume that the Premiers will be sensible about this matter and realize that they cannot make very long statements at the beginning of the discussions. They may run over what you think would be an appropriate ten minutes or fifteen minutes or whatever it was, but they are not likely to run extravagantly over. They are all men accustomed to meeting in conference and so on.

PROF. McWHINNEY: That is a short address, Alec; it is not very long.

PROF. BRADY: That is different. He is asked to give an address at the conference and he is not limited in time. This is a very different thing where you are introducing, after all, comments and discussions on problems of federation and from the angle of their provinces. You may find that your schedule is extended a bit, but I don't think you should begin to create an immense problem here when I doubt that it will exist.

PROF. McWHINNEY: It is not a problem. I think your contingency planning nevertheless will recognize a possible situation where it is extended considerably.

DR. FORSEY: If the first session spills over and takes up most of the second, you only provide fresh grist for Professor Conway's mill and show that we are incapable of abstract thought and philosophy and so forth - at least appear to be incapable and I suspect that, as Professor Conway says, there might be a good deal of the second session get into a prolonged first session; and with such abstract thought and philosophy as our public men are capable of, you would think Mr. Conway's very cynical views are justified.

PROF. CREIGHTON: What does "Quality of life" mean, Mr. Chairman? Is it another phrase for standard of living, or does it mean something beyond that.

THE CHAIRMAN: I would think it goes beyond standard of living, in as far as that phrase implies a material connotation.

DR. FORSEY: Cultural?

PROF. McWHINNEY: Is that the Tremblay report distinction?

PROF. CREIGHTON: I was just wondering what the distinction was between that

and 2. Does "Cultural" there mean ethnic?

PROF. MEISEL: Yes.

PROF. McWHINNEY: I suppose your answer is you will get different response. The Tremblay report, for example, suggests that the conception is quite different for French speaking Quebec than, say, English speaking Ontario. The whole advantage of the list is that some people will regard two elements as synonymous and others will add a third one. It will indicate differences, if they exist.

DR. FORSEY: I don't want to miss the joy of hearing Thatcher and Bennett and Manning on the "quality". This will be a treat for gods and men.

PROF. McWHINNEY: Do you think they will be unanimous?

DR. FORSEY: They will all be beyond description.

PROF. CREIGHTON: I don't know whether Johnson will be any better.

DR. FORSEY: Will probably sound a good deal better.

DEAN LEDERMAN: I think it is worth aiming as high as that phrase indicates. It is a very indefinite phrase but it will be interesting to see what people say.

PROF. FOX: There are a lot of things

that can be discussed under it, such as increase in growth of urbanization and what this means to people, housing and all those matters - recreation, leisure time and how you are going to use it.

PROF. CREIGHTON: It is all down here under "social and physical well-being"..

PROF. BRADY: There is an overlap.

PROF. CREIGHTON: I mean, the points that you raised ought to be included in there, not in the first one.

DEAN LEDERMAN: I think the phrase "Quality of life" is not intended to be mutually exclusive in relation to the other things listed.

DR. FORSEY: The pursuit of excellence.

DEAN LEDERMAN: The pursuit of excellence would be a similar phrase. I think I used that phrase some time ago in our meetings, and the quality of life.

DR. FORSEY: I would not bet heavily on most of these people having anything very profound to say on it.

MR. STEVENSON: Mr. Chairman, two of the things we thought would come out most starkly in this discussion and which perhaps the background theme paper may provoke some provinces into making a statement on, are some of the conflicts. This is partly in 2,

partly in the goals - the problems between a search after economic growth and competitive efficiency on the one hand, or regional balance on the other, or those problems of relations with the United States or with French-speaking countries and the Commonwealth. I think just on those two alone, since there is enough controversy in them, you can get any Premier talking for half an hour.

DR.FORSEY: I think possibly what was contemplated here was the kind of thing that Professor Creighton was talking about in certain of his articles, if I remember correctly - the opinion that there are other things that count beside ethnic and linguistic factors. I seem to remember some very eloquent words of yours on this subject.

PROF. CREIGHTON: I think it should be there. I just didn't know exactly what was intended by it. I wonder also whether it should be last instead of first. It might embarrass and trouble people by putting it in that situation.

PROF. FOX: I was going to ask a question that really relates to Professor Creighton's point. That is how it is thought these points will be dealt with. Are you going to raise each one individually or let the discussion run over all these?

THE CHAIRMAN: We were just chatting about that, and the question whether this is intended to exemplify an area of discussion as opposed to a slavish detailed examination point by point; that they will look at all of these and presumably have sorted out their values and their priorities and their philosophy they have. I don't know whether that is expecting more than is reasonable or not.

MR. GREATHED: It may be, Mr. Chairman, they would even add their own particular items. I don't think it is intended to be exclusive.

THE CHAIRMAN: I know one who will speak with a very well composed and consistent philosophy of Canada and its people, I think. Mr. Manning told us in his visit almost exactly what he would say, and it is coherent and covers really all of these things.

MR. PERRY: I wonder if instead of itemizing these things in this way, if they were run together in a paragraph preceded by the words: "Some possible aspects".

PROF. McWHINNEY: Or "examples".

THE CHAIRMAN: "Some aspects of"?

MR. PERRY: I am afraid you will have people nit-picking their way through this

list otherwise.

PROF. SYMONS: What really might develop though in what is left of the afternoon after the statements are completed, is the kind of second opportunity for the Premiers to have some general discussion, that partly will be focussed by this and probably will arise from their own remarks and their reactions to each other's remarks. So the whole first day really is a warming-up and thawing-out operation, is it not?

THE CHAIRMAN: It is getting them in the mood.

PROF. SYMONS: I think it is probably a proper use of the time. I cannot think of anything better.

PROF. FOX: I agree with Tom. I think it is a good approach. How will it ensue? Will there be any order of rotation of speaking?

(Page 60 follows)

--- At this point the Prime Minister, the Hon. J.P. Robarts, Q.C., together with Dr. J.K. Reynolds joined the meeting.

THE CHAIRMAN: Well, sir, we were engaged in two kinds of exercise today. The Committee wanted to discuss certain questions with you about the procedure and the content of the Conference; and then for the time we were on our own we were engaged on something of a mock conference, so to speak, working through the agenda and trying to anticipate some of the problems that may come up in dealing with it, and some of the positions that may emerge and so on. There are half a dozen particular issues the Committee would like to discuss with you, but perhaps there are things that you would care to say yourself.

HON. MR. ROBARTS: No, we will just sort of plod along. You raise the points, Ian, and perhaps we can discuss them. I haven't really anything to say in a general way.

THE CHAIRMAN: I will tell you the kind of things, sir, that we have talked about this morning.

HON. MR. ROBARTS: May I just ask this. What is the opinion of the Committee of the agenda and the sort of general outline as we have prepared it? Do you think we are

going in the right direction to produce a meaningful conference, or are there doubts?

PROF. McWHINNEY: This is the second time around of the agenda and, as you know, the first draft agenda was very strongly discussed and criticized; and I think we said this morning we felt this final agenda represented a very careful and very imaginative synthesis of all the criticisms. I don't know that you would get any agreement on anything better. In other words, I think it really shows the Secretariat have digested our last month's meeting very fully. I think it avoids, so far as you can, most of the dangers we discussed from other methods, and at the same time gives the forum the sort of open discussion you wanted when you first proposed a Confederation of Tomorrow Conference.

HON. MR. ROBARTS: I think the real problem is, when you do something that has never been done before there is an element of a gamble in whatever you do.

PROF. McWHINNEY: Surely.

HON. MR. ROBARTS: We have no precedents to go by.

PROF. McWHINNEY: I think you have taken care here of the various risks we saw in various ways, but at the same time left it open for some imaginative discussion, which is

what you wanted.

HON. MR. ROBARTS: It seems to me that from where I sit there is a growing sort of acceptance of the idea that we are after, and not only among the public but among those whom we have asked to participate. As this develops, some of the difficulties that we have faced, at least from previous experience of even this sort of thing, may evaporate when people become a little more accustomed to the idea and see what we are going to do. Sometimes you anticipate more difficulties than in fact arise, and the difficulties do fade away as people become, well, more knowledgeable and more accustomed, particularly when it is new. However, Ian, will you go on?

THE CHAIRMAN: Well, sir, there are half a dozen questions of this kind we discussed this morning. I will just run through them and then we can perhaps come back to them in order.

Keeping the conference on track, so to speak. Now, the agenda and the purpose of the Conference has a certain coherence about it, but at the beginning it is perhaps inevitable that someone may raise a highly specific and highly controversial question. Someone might say: "This Conference had better do something about off-shore mineral

rights." and what-have-you, and there will be the question then of trying not to get distracted into this to the extent that one is led away from the main purpose.

The second question that we felt one should think about in advance of the Conference, is the end - future Conference; that if one has some idea that there is to be a follow-up to this Conference, it may be a little easier to keep people concerned with the general goals and the general problems, knowing that such specifics as emerge will be discussed at a later time.

That, in turn, leads to the question that one must anticipate that some may say they would like a revived Premiers' Conference or future inter-provincial conference to be the mechanism for this; and the other point of view that perhaps really, if they are willing to take it on, it must be the responsibility of the Federal Government to convene future conferences and to deal with specific questions.

The third problem is one which you yourself will be firmly faced with, and that is the reconciliation problem; that there will be very sharp views, for example, on the language question undoubtedly expressed from different parts of the country; that Ontario, Manitoba and New Brunswick to an extent have

taken certain positions on this subject, and the question will be one of perhaps preventing a sharp breach of opinion on this matter.

That in turn led into a very interesting discussion of the next question, which was the logistics of chairmanship; that there will be times undoubtedly when the gentleman who is physically in the Chair may have very heavy responsibilities in terms of preventing undue breach among the Premiers, and that he may have to have the stature of one of the gods, so to speak, to do that.

On the other hand, the point of view was expressed (the other way of looking at it) that it would be very much easier for you to do this without the Chair than within. We have been over that ground before, of course.

Another point that came up is any arrangements you might think appropriate for interim consultations along the way; that undoubtedly questions will emerge, and one will want to discuss perhaps with this group or others what their meaning is and what the next sequence of events should be.

Then the final question was what appropriate position and style the Ontario opening statement should take. On the one hand the point of view was expressed that one would like this opening statement to be

sufficiently general that it contributes to a dialogue rather than locking people into firm positions from the beginning; on the other hand, there are certain expectations surrounding Ontario's goal in this dialogue, and the suggestion that perhaps Ontario should have certain firm principles that it can lay out at the beginning as indicating its position and its point of view.

Those were the kind of questions we thought could be usefully discussed with you as a beginning.

HON. MR. ROBARTS: I haven't the benefit of your discussion on this point. Did you discuss it?—

THE CHAIRMAN: We went through this in a preliminary way among ourselves, so that we would be a bit worked up. I realize we catch you ---

HON. MR. ROBARTS: I think, as you read those, I think I have some sort of position on every one of them as a matter of fact.

THE CHAIRMAN: If it is easiest or more orderly, perhaps we could go through these and lead us into other directions on the way.

The first one was that of keeping the Conference on track in terms of the agenda, as opposed to explosive matters that may come up of a particular nature which may involve

federal-provincial implications.

HON. MR. ROBARTS: I presume that the answer to this one lies in the type of Conference we have called and what we have said it is going to be and what we will say or what Ontario will say in its opening statement. In other words, we are not calling this Conference for the purpose of confrontation of opposing points of view. These points of view are to be put, but we are not looking for any decisions.

Therefore, if the Chairman and everyone there has this firmly fixed in their minds, you can have some highly conflicting points of view that should not necessarily be at conflict, if you understand what I mean. People have points of view that are just different, but there is no function in this Conference, I think, to reconcile those points of view at this stage of the game. What we are attempting to do here is to pull these points of view out from the people who hold them, but not necessarily to reconcile them and not to develop a position where one person is going to argue for their point of view against the point of view put by somebody else. Now, if we could have that sort of basic understanding of what the Conference is doing, would it not resolve some of these difficulties?

1. The only problem here is: does this make it what might be termed too wishy-washy

that this meant a conference to provide people with a public forum in which they can state their positions, rather than to provide a forum whereby they are going to take their positions and fight their position against somebody else who may hold a different position.

PROF. CREIGHTON: It is assumed then, is it, sir, that there will not in fact be any debate at all; that there will be just a series of statements?

HON. MR. ROBARTS: I would hate to think it would become just a series of statements, unless those statements on a continuing basis were coloured further by what someone else said; but I don't think it is a debate in the true sense of the term, where you have a pro and a con and somehow or other you have got to battle this out to a point where one side wins over the other. This, as I understand it, is the meaning of a debate.

This is more an opportunity to find out really where the points of agreement and disagreement may be in the thinking of the ten regional governments across the country.

THE CHAIRMAN: I was just going to mention the C.D.Howe distinction in the House of Commons: "We do not want discussion to degenerate into debate"(laughter).

HON. MR. ROBARTS: Well, it is almost

that difficult to draw this line, but I see your worry of this degenerating (if that is the term) into an acrimonious debate, and I think we would want to avoid that at all costs, because that may come along at some other time.

You see, the reconciliation of the points of view must come some time in the future, and we don't know at this stage of the game really under what guise it will come or in what form or how it will be done. This Conference as I have always thought of it conceptually, was simply to get this thing started so that positions are out where they can be seen and be given an aura of authenticity that they will be given at a Conference of this type; instead of turning up in speeches and political campaigns and all over the place, they will all be put together in some formal form.

DR. FORSEY: The difficulty though, I think, remains that you have, if I may say so, some, as leaders of the delegations, a number of fairly individualistic individuals to deal with, and I think you might have a little bit of difficulty keeping some of them on the rails. I think of the Premier of my own native province, together with a couple of western Premiers who might tend to go off at a tangent, and I do not envy the Chairman his

job of trying to keep the thing on the rails. I think this is perhaps one problem that is worrying some of us. I do not wish to imply that you are not capable of keeping anybody on the rails, sir.

HON. MR. ROBARTS: I understand what you mean.

DR. FORSEY: But it may exercise your mind a little bit.

HON. MR. ROBARTS: Of course, whoever chairs it will have to approach it with a high degree of flexibility, because these people are obviously going to say what they think. On the other hand I have an idea personally that the men coming to this Conference will come with a certain restraint. In other words, it is, sort of, number one; it is a new forum, a new approach. They will want to get the feel of it and find out how it is going to function.

Mr. Bennett may say he does not want French schools, as he has said, and this may come out, just as an example, but I donot think this is necessarily going to spark an angry response from Mr. Johnson.

DEAN LEDERMAN: There is a safety valve too, sir. There will be debate, but it will be in the background when the public sessions are over.

HON. MR. ROBARTS: That is another point that you will get to in this discussion.

How much time do we allow to public debate; what arrangements do we make for private meetings to take place; and what formalities are there to ensure that everybody knows that these private meetings can take place?

This is a matter of organization among ourselves, but in relation to this first question of keeping the thing on the rails, another question we don't know is how much time. This has been raised informally from Quebec, has it not?

THE CHAIRMAN: Yes, it has.

HON. MR. ROBARTS: And I don't think that, as the Chairman of this Conference, I would want to be in a position to say that everybody has got ten minutes. I think this would be completely wrong. If any delegation wishes to take an hour and ten minutes to put their point of view, this is the purpose of the Conference that they have that time to do it.

So the Chairman is going to have this problem. He is never going to know what the time limits will be. That is why we have, I suppose, four days. You will recall at the beginning I said two days, and got shot down in flames for that, but this came from my experience at federal-provincial conferences where I found that nothing constructive was

ever done after day 2; but it may be that as time goes along here this, I think, is going to be one of the difficulties, but this is the fate of any Chairman, is it not? Within the broad ground rules, he has got to play it by ear and hear what happens.

DR. FORSEY: I will be a little afraid with Joey, for example, if there arose the problem that Jim McDonald had at one time when Charlotte Whitton appeared before the Parliamentary caucus of the Conservative party. Jim was chairman and he had a fine time keeping her in order. He said: "I had her before the Queen's Board of Governors and I had no difficulty at all. Leave it to me." He came out perhaps a little better for the encounter with Charlotte. I think, being a neo-Charlotte on these things, I suspect that he might just cut loose. You know him better than I do.

HON. MR. ROBARTS: I am quite interested that he is coming. We have formal notice that he will be here, together with a group of advisers. Of course, this pleases me very much; not that it is not Joey per se, but I think it is very important that the smaller provinces come and say their piece. If Joey wants 90 minutes - and he very seldom speaks for less - he always starts out by saying: "It doesn't

matter what I say, and I haven't got very much to say but ..." and an hour later you see, but I don't know any means whereby we can control this. I would hate to attempt to put any limit on it. As a matter of fact you could, but it wouldn't work, of course.

DR. FORSEY: If you are speaking from loose sheets, you might get somebody to do the old Spence practice. In the House of Commons one time Tommy Church was in the middle of a long speech, and had a thing like that, and they were expecting Black Rod at any minute, and while he turned away, Spence turned up about three-quarters of the sheets, and Tommy didn't know the difference.

THE CHAIRMAN: I am afraid you could hardly do that, sir.

HON. MR. ROBARTS: I wouldn't have the reach to do it.

PROF. McWHINNEY: This means essentially then that you would take a flexible view towards the morning and the afternoon agenda in the opening day, and you would not regard it as fatal if the afternoon agenda disappeared, because of the lengthy statements.

HON. MR. ROBARTS: No, I don't think we would. I think it would probably move over into Tuesday morning, and we would adjust it this way.

MR. STEVENSON: As we have been saying, Mr. Robarts, the last two sessions are such that they could easily be telescoped into one, and certainly we are not worried at all if you lose a half day in the first couple of days.

HON. MR. ROBARTS: I will go back to an experience I had of chairing here in Toronto the first meeting of all the Ministers charged with the responsibility for education in Canada, and the first time in the history of our country that they had all met. Well, in that particular conference I felt that the major accomplishment was to hold the conference; the content really (and I am not fooling) was secondary. The important fact was that we got everybody together and sort of acknowledging one another.

Now, the same is not completely true of this Conference, of course, because there has been a great deal, but I think we are starting into something new and I think one of our major objectives is to make sure that it is a conference that indicates it is a worth while form of activity, and then we will worry about the particulars after that. I think that is the major thing we are up against here, to create a forum that is not only useful for what it is doing in those few days, but will be useful

as a means of dealing with the problems for a period of time.

Which leads into your question about what happens next. I don't know whether this follows up what we are discussing here, Ian, but it seems to me the basic question is: Is it to be Ontario's responsibility to provide for the continuation of this idea, or do we leave it to somebody else? Do we fill the vacuum, if there is one, but wait to see that there is one before we make any move? These are the thoughts that have been going through my mind about what might happen next.

THE CHAIRMAN: There were some interesting comments on that this morning which you might care to hear. I think different views were expressed about this.

PROF. FOX: I think some of us made the point, Mr. Robarts, that it is very important in the psychology of the thing to provide another point at which people can orient their sights after this Conference is over; so that whatever their feeling is about what has been achieved at this Conference, they have something to look forward to and something they can orient their own clientele towards in the future. In other words, it is not all ended with this Conference: there is another point to which to look forward; and that this

could be achieved in several ways.

I think the feeling was expressed this morning that it would not be feasible to keep having full conferences of this kind in great number, but there might be working bodies set up or some other arrangement made to provide for ongoing continuity.

PROF. McWHINNEY: I think your point about the education Ministers' meeting is a very real one because, as you remember, when you first approached this idea it was suggested sub rosa anyway at the national level that this was a dangerous thing to have, a conference at this stage; so that I would think 50 per cent of its success is the very fact that it can take place, and presumably can take place without an explosion and people walking out. So that in a way that does govern one's attitude towards the agenda, and you have indicated you regard the agenda as flexible enough to be subordinated to this main purpose.

It does, however, also, of course, affect your own role, and when we were talking about the Chair situation I made the analogy to the United Nations General Assembly. One is not committed to the parliamentary system of having a neutral chairman; there is no working reason why one should. If you felt

you could control the temper of the meeting better as Chairman, quite obviously that role is open to you. One can speak from the Chair; one is not limited to the U.N. General Assembly debates. I think if you wanted to reflect the reality of political life, which may include violent conflicts, I suppose it might follow the General Assembly policy. One has a neutral Chairman, one has a free-for-all in the debate. I think that sort of conference, in my submission, would be very unfortunate, but many people might feel differently.

HON. MR. ROBARTS: I don't know whether you have discussed it. In the first place, to get back to your point, if we could decide what we think the next step should be, it seems to me that the easy way to establish this is in Ontario's opening statement, where we simply say what this Conference is and why it is, and then say what we hope will flow from it. In this way, before the Conference ever begins, we would establish the next step, and your psychological point would then certainly be met, because everything done at this Conference will be done in terms of what was going to follow it. That just requires us to decide what the next step would in fact be.

PROF. MEISEL: Mr. Chairman, however I think this makes some assumptions about the nature of the Conference. It may be that the Conference will itself suggest topics that at the present time one does not necessarily expect will lead to a sort of immediate discussion, but perhaps some things will appear to be more urgent than we now think, and those should certainly be the subject of further discussion, either in the follow-up discussion or follow-up work party or whatever the type.

HON. MR. ROBARTS: I suppose we could get at that too by saying that the agenda we would present is tentative. If this Conference itself decides to rule out one-half and to deal with the matter that has come up, that would be acceptable as well.

DEAN LEDERMAN: I was going to suggest, sir -- in part this is a question but in part a comment - I am wondering what the current position is on the intentions of the Federal Government concerning the January or February Federal-Provincial conference. This particular Confederation of Tomorrow Conference may find itself wanting to suggest to the Federal Government that the Federal-Provincial conference might address itself to certain things. I think Mr. Pearson has invited

agenda suggestions, has he not, for this conference?

HON. MR. ROBARTS: Yes. The events of my life have been so hectic in the last while that I am still pulling some of these things together, and I don't recall what is the latest letter with reference to this.

THE CHAIRMAN: Well, sir, I don't think that this came up in correspondence, but while you were away the question was asked in the House of Commons about this, on very much the same point: that certain Federal-Provincial problems that are being discussed, could they be on the Confederation of Tomorrow Conference? Mr. Pearson replied that he was having his Bill of Rights Conference early in the new year, and any matters that came up and that the Prime Ministers wanted to suggest could be put in the agenda of that conference, would be welcome there. This was the statement he made in the House.

PROF. McWHINNEY: Mr. Trudeau said the same thing in his Bar Association speech, but in the press conference that followed I think among various other statements he seemed to take this away again. This was a specific project, limited to that.

DEAN LEDERMAN: My only point is that without prejudice to what one might do to

continue this type of conference or to develop it into study groups and that sort of thing that may happen, without prejudice to what might happen along that line, since the forthcoming Federal-Provincial Conference is proposed and is on the books, discussions of the next steps are bound to include, I think, steps that will be taken at that conference.

HON. MR. ROBARTS: What would the situation be (this thought has occurred to me) if for instance Mr. Johnson says in the conference now: "This has been great, and I invite you all to come to Quebec, and I will set it up here for March"? I think this is a very distinct possibility.

PROF. MEISEL: Mr. Chairman, I think one of the things that crossed my mind was that in informal discussion among the Premiers this very problem might informally be spelled out, in that one very distinct possibility is just that, that Mr. Johnson will ask for a conference to be held in Quebec. The other possibility might be that the Premiers could themselves discuss whether they think it would be useful to find a new role for an annual Premiers' conference that would be automatic and the agenda for which might be planned not necessarily by the host province but by all the governments or a committee

appointed by them; so that one is ready, if there were some danger of this thing falling into the hands of Joey or another Prime Minister, that it might be useful to be ready for some sort of very clearly defined consultation to take place before the thing drifted into this direction.

PROF. McWHINNEY: If the two conditions you mention are there - the Conference is obviously a success from the viewpoint of the participants, and you do get an invitation from Mr. Johnson - is there any reason why anybody rationally should refuse it? You know, if it is obviously a success and you have got this wide spectrum of political opinion represented by all Premiers in agreement with its success, and they want to meet, why not?

MR. PERRY: I think this is pretty crucial though. Ontario has definitely taken the initiative for the Conference. Does Ontario want to maintain that initiative? Are there real values in having Ontario retain it? Once it goes to another province you have substantially lost control.

HON. MR. ROBARTS: Well, completely.

MR. PERRY: Excepting in your comments on the proposed agenda.

PROF. McWHINNEY: It is only

successful if the people want to come, and I think the extraordinary thing in this really has been that all Premiers are coming; and if the Conference gives rise to these fears as various people expressed at earlier stages, then I assume you won't get that consensus again and the problem is academic. If you do get into the situation of general agreement that it has been successful, well, I am sure there are no dangers in the Conference and you can be fairly sure you will get federal representation the next time.

PROF. MEISEL: It is very dangerous, however, if Quebec were to call the Conference and Ontario were to say "No, we are not going to come".

HON. MR. ROBARTS: My comment was going to be this, that if I were Mr. Johnson and thinking about this, around the back rooms of this Conference I would find out what the reaction was before I issued an invitation. I mean, you sometimes like to know the answer before you ask the question, and it would not be difficult for him to find out what the reception would be before he does it.

That touches the issue as to whether we are accepting a series of conferences as an Ontario responsibility. My sort of immediate reaction is that we did not really set this thing

up with that idea in mind. I do not see Ontario as the custodian of all the constitutional discussions in Canada. What we were really trying to do was to get this problem out in the open where it could be faced and looked at and dealt with, and so that we might get some opinions that would be of assistance to all of us who are involved in what the future steps might be.

Now, if you approach it from that point of view, from our point of view we are open really, as a province, to any suggestion that the Conference itself can make as to whether it wants to continue. If they want to continue in Ontario, we would be delighted to provide the forum again, but I am a little reluctant to thrust ourselves into this role of underwriting a continuing number of these conferences.

PROF. MEISEL: That would be a mistake, but is there not a possibility that in the future - and I don't think we should think only in terms of Mr. Johnson but we should take the longer term view, because now Ontario has done it it has set a precedent which may be followed by other provinces for purposes that are quite different than the ones that we had in mind.

I think there is a possibility,

I suppose, that at some stage a group of very extreme advisers might press the Quebec Premier, who may or may not be a very moderate person, into calling a conference not for the sake of doing something for Canadian unity or the survival of the country, but merely to secure a point in the argument for Quebec nationalism, separatism, or what-have-you.

I think it might be useful if out of this Conference came some kind of agreement that future conferences, whatever they are, are held in such a way that their agenda and general arrangements are discussed; that it is not the initiative of one province but the whole thing is discussed by a group of Prime Ministers.

HON. MR. ROBARTS: I see what you mean.

DR. FORSEY: This seems to me very important, Mr. Chairman, and the same point had occurred to me.

The other thing is that I hope the Conference won't lock into position where it excludes a Dominion initiative on this. It is possible that after Mr. Pearson's conference early in the new year, the central government may get into the act in a much more considerable way, and it might be that some of the work which would otherwise have to be carried on by

a second conference of this sort, might be carried on by a joint Dominion-provincial conference or working committees or what-not.

Therefore, if I may venture to say so, I should be inclined to suggest that there is an escape hatch left open somewhere so that we are not charged with saying: "Well, damn the central government. It is not going to get in on this act".

HON. MR. ROBARTS: If they were to move in, this would be very welcome in this province and in this government we would just back right out of the scene.

DR. FORSEY: I wouldn't necessarily suggest that.

HON. MR. ROBARTS: We would move into the form of organization, play our full part there as well as we could.

That is the problem. You put another aspect of the problem that I had, where I don't want really, I guess, to have Ontario committed to or to assume that we are the ones to carry this thing on. Let us have this one and see what reception it gets and what reaction we get from the other provinces. This is something that on about Tuesday we might start muttering around these other delegations, as to what the reaction is and what do they look for in the future and how

would they like to hold it? I think anybody would be quite foolish to jump into this, any one of the provinces, without knowing what the feelings of the others are.

MR. STEVENSON: Mr. Robarts, I personally would feel that there is not much danger of the follow-up being left strictly to Ontario. I feel that the most likely possibility is a competing desire by the Federal Government and Quebec to take the next step. Then there is a dilemma for Ontario as to whether it does accept an invitation by Quebec to a follow-up conference if the Federal Government states very strongly that it feels the provinces have now had their day and now it is up to the Federal Government to call such conferences.

HON. MR. ROBARTS: You mean our dilemma would come if there is competition between Quebec and the Federal Government?

MR. STEVENSON: Right.

HON. MR. ROBARTS: As to who was going to do it. Of course, the Federal Government are in first, because they have this conference to deal with the Bill of Rights. It is rather difficult for us to decide at this stage of the game how this thing will develop. I think what we need to do is be well aware of the pitfalls, and

then maintain flexibility and deal with it as it works itself out.

I would say the Federal Government must be going to watch this thing with the greatest of care on an half-hourly basis as it proceeds. I don't know how else they could really approach the thing to see what course of action they may take. That is the problem of not having any government representation: there is nobody to speak for the government.

PROF. FOX: There is a danger, Mr. Chairman, that if the Federal Government expresses interest in taking over the mantle of leadership in having such conferences, that this initiative might be left with it and then nothing much might come of it.

5 The way I read the Federal stand at the moment is that there is a division of opinion within the Cabinet as to the nature of the conference that is being held in January. I think we have seen it change. The Trudeau position was very limited and confined only to discussion of the Bill of Rights. Then Mr. Sauve got into the discussion and broadened it with - I don't know whether with or without the agreement of Mr. Trudeau but he did with the approval of the Prime Minister; but we are not at

all sure what the dominant opinion is within the Federal Cabinet, and one could see the whole thing coming to naught because the Federal Government assumed the leadership and then did not perform its function there.

I would think it would be wise for Ontario to maintain its option to continue to promote the goal which was to be achieved through the device of a conference, without attempting to assert in any exaggerated fashion its leadership in the thing, but at the same time having the opportunity, if the need arises at some future date, to come back in to promote the type of thing that you have done here.

HON. MR. ROBARTS: We maintain that position simply by not cutting ourselves off.

PROF. McWHINNEY: There is a basis for meetings with provincial Premiers just as, of course, the provincial education Ministers you mentioned; there is a basis for regular meetings simply to discuss non-immediate issues.

For example, it is a feature of the United States constitutional practice - the annual conference of the Governors of all 50 States without the federal government; it is a feature of the Australian federal constitution and so on. So it is a perfectly legitimate position to maintain, if one wishes,

that there is a useful function in continuing meetings of this sort without the Federal Government.

Of course in this particular case your position from the beginning was that this was a special conference and you were willing, indeed anxious, to have the Federal Government in. So that I take it if the dilemma is posed of the Federal Government getting into this, Ontario naturally defers to the Federal Government. One welcomes this. I think you wanted this from the beginning, to come in really and take part in the dialogue.

THE CHAIRMAN: I notice the last Governors' conference took the form of a week-long cruise to Puerto Rico and back.

DR. FORSEY: Apparently the weather was rather rough, judging by what the Economist said, and some of the Governors were not able to make a very marked intellectual contribution.

THE CHAIRMAN: In the sea or in the ship?

DR. FORSEY: In the sea.

HON. MR. ROBARTS: I think this is a real problem. I think one has got to work it out in terms of the events.

THE CHAIRMAN: Well, perhaps that takes us into the next question. This may have dissolved somewhat in your earlier remarks.

I will have to look at it carefully because we had quite a discussion on the meaning of words this morning; but I take it the discussion was: "All right, even confrontation and even debate" but reconciliation was not necessary at this conference.

HON. MR. ROBARTS: Does not reconciliation imply decision?

THE CHAIRMAN: Yes, in that sense.

HON. MR. ROBARTS: And we have made it very clear that we are not meeting for the purpose of arriving at decisions at this time.

PROF. BRADY: But that would not exclude, Mr Robarts, really, a discussion of the possible solutions I assume.

HON. MR. ROBARTS: No, it would not.

PROF. McWHINNEY: What would your reaction be - and I mention this only because I think Claude Ryan put out an editorial in the last few days and he was certainly referring in the Quebec paper to the B.C. editorial discussion, two different directions of statement. "We must put the off-shore mineral matter on the agenda of the Confederation of Tomorrow Conference". There is, I suppose, a specific problem that does not exist on the present agenda, except insofar as it is a

subordinate point to discussion of the Supreme Court and various other things. What would your attitude be to a new item really that did carry a suggestion of immediacy or even of decision?

HON. MR. ROBARTS: I don't know whether this would be acceptable to the other Premiers, but the whole question of off-shore mineral rights has been the subject of discussion in federal-provincial conference. As the result of that discussion it was referred to the Supreme Court of Canada. The Province of Quebec said that it would not pay attention to the decision of the Supreme Court, and Mr. Pearson himself said that that decision would only be preliminary to a political settlement of the situation.

Now, if you take all that background of the question, I do not think it belongs in this agenda at all, because it will inevitably be dealt with in the forum in which it was originally raised. That would be the argument that we put to anyone who wanted it here, that this subject is going to come back to the federal-provincial conference at which the Federal Government will be represented. The Federal Government has indicated that despite the legal decision, there is a political decision to be made, and that political decision

can not be made at this Conference because the Federal Government isn't there and they are the winners under the Supreme Court of Canada ruling. So really it will be much better left to come along, as it will inevitably, in the same forum where it started.

PROF. McWHINNEY: With all respect, I would agree with that one hundred per cent, and I think you might add to your legal arguments the fact, one, that it is an advisory opinion of the Court and not a decision.

HON. MR. ROBARTS: I didn't know that.

PROF. McWHINNEY: Yes, it is an advisory opinion limited specifically to British Columbia, and even if it were a decision it would have no binding force necessarily viz-a-viz Quebec, Nova Scotia, and the other provinces.

DEAN LEDERMAN: I must enter a caveat of my own view on that. I dissent from this exclusion of the status of reference cases.

PROF. McWHINNEY: It is coming up, of course, in connection with the role of the Court I suppose. Claude Ryan had an excellent editorial in yesterday's Le Devoir which raises the issue directly including, I gather, the issue of abolishing reference cases,

abolishing the jurisdiction.

HON. MR. ROBARTS: Well, I think it would be better to deal with this on the specific item. I think it would be out of place in this agenda and this Conference. I rather doubt that anyone will attempt to raise it without notifying us beforehand, because we have, as you know, close communication with all governments here, and I rather doubt that any province would sort of walk in here at the Conference and say: "Now, I would like this put on the agenda". In the first place, it would probably never be reached.

PROF. McWHINNEY: I think it was Mr. Faribeault actually that let drop the word that Claude Ryan put up, though Mr. Faribeault is not Mr. Johnson.

HON. MR. ROBARTS: You know, we follow these things pretty closely, but the average person does not, and the whole history of this thing is well known to us but it may not be well known to Mr. Faribeault. You had to either study or be at this conference where these things took place, to understand that sequence of events, and it will be settled in another area.

PROF. FOX: It was Mr. Bonner actually who raised it in the reference that I saw in the press. He was quoted

specifically in the Globe the other day at an interview, as saying he would raise it for discussion at the Federation of Tomorrow Conference.

HON. MR. ROBARTS: Well, if it were raised - of course anything can be raised here - I suppose from my point of view I would say to the Conference exactly what I have said here, that we could not really settle it there. You may discuss it, but I don't see it would benefit anybody, including British Columbia.

THE CHAIRMAN: Well, there are other areas that are more than in the provincial realm - for example, the provision for language and the provision for the bicultural two-societies problem; and, as I say, if reconciliation is not a problem, perhaps this issue disappears; but in the discussion this morning the view was expressed that in a situation as sharply divergent as this is, and in the absence of the Federal Government, that it might fall to the Prime Minister of Ontario to speak for Canada, so to speak. It is a position you may or may not want to be placed in, but it might nonetheless arise.

HON. MR. ROBARTS: How would this come about, how would I be called upon, I mean as chairman?

THE CHAIRMAN: Well, in the sense

if there were very strongly opposed points of view expressed about what the meaning of the two-societies, the bicultural Canada is, and one could get caught in the middle of having to offer an opinion as to which of those divergent interpretations of Canadian history and politics were correct. This is the normal role of the Federal Government in this diverse country, but in the absence of them might well revert back to you to take a position. I don't think I have explained that too well. I think, John, you raised this.

PROF. MEISEL: I wasn't thinking so much of the facts being set straight, but that there are certain interests which all provinces have in common which normally the Federal Government ought to express, and which cannot emerge because each province will be arguing its own particular case and the well-being of the whole group may not be very effectively put because everybody will become so parochial. In that case, it seems to me the interests of Ontario are permitted, for two reasons, to express the Canadian point of view - partly because on the whole I think Ontario's interests are perhaps closer to those of the whole country than those of some other provinces; secondly, because the Federal Government not being there,

as the senior province and as the province that has assumed some responsibility for this, we shall have to put a national point of view if no one else is present.

HON. MR. ROBARTS: I think it would have to be on the basis that "Ontario thinks that...".

PROF. MEISEL: Yes, I am not suggesting that you say that "I now speak for Canada", but in speaking for Ontario you would in fact be speaking for Canada rather than for Quebec or British Columbia or what have you, or merely for Ontario.

HON. MR. ROBARTS: From my own point of view, it would have to be kept within the area that this is Ontario's view of the Canadian scene.

PROF. MEISEL: Yes, it should be.

HON. MR. ROBARTS: Never get involved in the position where I am speaking for the ---

PROF. MEISEL: No, but presumably the kind of thing where it may be in the interests of Ontario that the Federal Government has certain powers.

HON. MR. ROBARTS: Quite.

PROF. MEISEL: You know, Mr. Thatcher may say this, but he may say it in such an objectionable way that the same point may have

to be re-stated by a person who puts it moderately and who obviously understands the position of Mr. Johnson on the same point.

HON. MR. ROBARTS: There is going to be a lot of fast mental footwork here.

DR. FORSEY: By the way, Mr. Thatcher and Mr. Manning may find themselves in a certain odd sort of position now that the article in the Law Journal has revealed that very probably, technically, legally, Alberta and Saskatchewan still have official bilingualism. Apparently the necessary proclamation that made English the sole official language was never issued. It seems the machinery, therefore, has never taken effect. The two authors of the article say they have searched diligently and say they cannot find any proclamation issued or even prepared. Apparently in the N.W.T. they passed the necessary resolution making English the sole official language, but in the ordinance it was not to come into effect until the proclamation was issued by the Lieutenant Governor. It was never issued, and Saskatchewan and Alberta maintained the status quo of such and such a date, 1892, I think.

It is quite possible, therefore, that these two gentry may find themselves in the position where they have got to worry about

their own backyard more than the larger question. It is just a curiosity of history.

PROF. MEISEL: This could be summarized for Mr. Robarts so that he can deliver an appropriate lecture.

DR. FORSEY: Just as Mr. Manning gets nicely launched. (laughter)

THE CHAIRMAN: It would be nice to have that to pull out of the back pocket.

DR. FORSEY: That he was breaking the law and has been for a long time.

THE CHAIRMAN: We have just a few other points. I don't want to hurry the thing along. This did lead us into the next question, on which there is quite a bit of feeling expressed on both sides, and that is the chairmanship throughout. I don't know whether you want ---

HON. MR. ROBARTS: My thought in this matter really is that I would of course chair the opening session and chair part of the sessions. I felt we might arrange to have a co-chairman standing by in case I wanted to leave the Chair and go and speak on behalf of Ontario. This was the way I had sort of worked it out. I hadn't thought of some of the things you express, Professor McWhinney.

FATHER MATTE: The co-chairman to be a premier?

HON. MR. ROBARTS: No.

FATHER MATTE: Someone else.

HON. MR. ROBARTS: Now I am not committed to this. I have spoken to nobody, I have appointed nobody. This was the thought that went through my mind, that we would get somebody who would be completely impartial..

FATHER MATTE: Acceptable to everyone, which would be very difficult. I don't see quite ---

HON. MR. ROBARTS: Well, the alternative would be for me to chair it, and then to put Ontario's position from the Chair, which I really never even considered doing.

DR. FORSEY: Participating Chairman - one gets them in discussions sometimes.

PROF. McWHINNEY: It is a powerful job being Chairman. It is the important job of selection. You are not in a strict parliamentary forum where one insists on the debates form and the neutral Chairman. It seems to me perfectly open to you to use the job. On the other hand, it is an exhausting one physically, there is no question. You have to be on the qui vive all the time. However, there is no question that the Chairman in command, for example, if some Premier gets a little heated or things of that sort, it may be done much more effectively from the Chair by somebody who is very calm. There is

such a thing as controlling the movement of a meeting; you are in control of the dynamics of the developing debate.

I think if you give up the Chairmanship, you should be fully aware that you are giving up certain powers in doing so. On the other hand, it will be a killing job being Chairman for four days.

PROF. MEISEL: Not only killing - just stating the position of Ontario you will want to examine what is going on, not only from the point of view of the way the whole thing is developing, but from the point of view of what Ontario ought to be saying.

HON. MR. ROBARTS: I mention another point I have in the back of my mind on how we handle this really, and that is that our delegation will be there but what I would hope is that we will, as a delegation, caucus after each of these meetings so that we can get the slant that everybody has on what has been said.

But that would overcome to some degree, would it not, the position? In other words, while I am sitting in the Chair I would have to be an impartial Chairman, but there would be opportunity for somewhat less impartial examination to be made on everything that has been said and that could be discussed; and I sort of look upon this as perhaps a formal

opening statement but then after that Ontario's position is going to be in the light of what is said as we go along and we will be making up, developing positions as we hear what other people say.

7. DR. FORSEY: It would be difficult to get a really impartial outside Chairman, I should think, of sufficient weight and prestige - unless you get U Thant, or somebody like that, and he has his hands full. It is difficult to get such a neutral, impartial Chairman of sufficient weight, it seems to me. I hope I shall not be accused of apple-polishing when I say that as I look over the list of provincial Premiers, some of whom I don't know at all, I should think we would find it very difficult to get anybody with the tact, discretion and opinion informed/which we find in our own Premier in this capacity. I would have great confidence in the way he is likely to handle the thing, and I would say this with even more emphasis behind his back, but it is a tricky job and one doesn't want to impose upon our own policy groups ---

HON. MR. ROBARTS: We took this thing on to make it work and that is the way we will approach it.

PROF. MEISEL: I agree. I am wondering whether the kind of things that one may have to say as chairman don't to some extent put you in a light that you may jump on people, you may have to some extent displease

some one of the members by virtue of being Chairman; and I am not sure that the spokesman for Ontario should have to watch that side of things, when in fact his major responsibility after all is to put the point of view of Ontario.

The one person that I thought, though I don't know enough about him, who would have the stature as chairman, would be Mr. Frost. I don't know whether he is interested in this kind of thing or at this point his health is good enough, but he would have the stature, and if he worked closely with Mr. Robarts they could act as Chairman together, with Mr. Frost taking on certain sessions, particularly those where Mr. Robarts might want to make a strong statement.

PROF. McWHINNEY: The third alternative is really your rotation of chairmanships, and I think this has general agreement it is one of the reasons for the disintegration of the U.N. General Assembly, -- continuity of people, some lack of continuity. Some people are excellent, some are very bad, with the process of selection. Some of the Premiers quite obviously would not be suitable as chairman even for one session.

I don't think I am over-stating the case, Eugene. It really takes you back to the question of who is available and how they handle this. As I understand your general

philosophy on federalism - and I very much appreciated the Montmorency speech which has just been circulated to us - I don't think it would be incompatible for you, with the positions you expressed at Montmorency, to hold the Chair and make statements from the Chair. I don't think you would be accused of being biased or misusing the office in the same way I think several other Premiers might be. With all respect to Mr. Johnson, I do not think he would be a good person to chair.

HON. MR. ROBARTS: I don't think he would accept it. From my knowledge of these men, in that situation I don't think any of them really want to chair.

PROF. McWHINNEY: Put Mr. Bennett facing an impossible situation.

HON. MR. ROBARTS: He has no desire at all.

PROF. SYMONS: Mr. Chairman, I wonder if rather than a co-Chairman, which I think is a very difficult thing to secure at a sufficient level of acceptance and prestige for a conference of this national sort, it might be possible to think in terms of a deputy chairman of a more workmanlike sort, which would provide a device that would enable the Prime Minister of this province to have

-ship
relief from the chairman/department when he
needs it.

I think both in terms of the physical strain and in the terms of the political necessities to move about and to discuss, that you would, sir, perhaps want to have opportunities to leave the Chair, perhaps occasionally for short periods, perhaps at some point you might want someone to chair a complete session so that you would have free time to hold certain discussions. I think it would be very important for there to be a standby arrangement with a competent, acceptable workmanlike Deputy Chairman that you could then turn the Chair over to. I think it would be quite in order for a person of this sort to be named by you as the host for the occasion.

FATHER MATTE: Will such a Deputy Chairman be a gentleman from Ontario? Do you have this in mind? Should it be someone pretty close to you maybe?

PROF. McWHINNEY: Ontario Cabinet Minister (Tom is right) has the right clearly to name a Deputy Chairman, and he could be properly somebody from Ontario.

HON. MR. ROBARTS: "Deputy Chairman" is a much better term than "Co-Chairman" I agree.

PROF. SYMONS: For the kind of thing we are looking for, it might help to find out a bit about ---

HON. MR. ROBARTS: We have given this some consideration, but I suppose really just as a matter of insurance we should have a Deputy Chairman appointed, because it may just simply be not possible to be there for every session. Let me think that one over.

What would happen if we had a Deputy Chairman and then I wanted to speak from the floor? I would be sitting there, of course, and I would simply ask him to take over while I made a statement; then I would reverse the thing and go back into my seat. This may overcome the difficulty, because he would only be in the Chair when I was speaking from the floor. That might be some answer to this.

FATHER MATTE: I would very much prefer such an arrangement. I am much in favour of it.

PROF. McWHINNEY: I think it is the right suggestion, and it seems to me most proper that you should name the person and it probably should be a member of the Cabinet here, the Attorney General or ---

HON. MR. ROBARTS: I wondered about this, whether I should get someone who might be deemed a little bit more impartial than a member of my own Cabinet.

PROF. McWHINNEY: Well, Mr. Frost

would be in the same category, I think, even though he is not a political decision-maker as I suppose is the technical term. He is above the battle too, and in the same sense as you are in calling the meeting. I think it would be a very acceptable choice.

HON. MR. ROBARTS: You think Mr. Frost would be?

PROF. McWHINNEY: I think so. Whether he would want to take it on, you would know better than we would, but I think it would be a very well received choice, I am sure. I think John Meisel's suggestion is excellent.

DR. FORSEY: The problem would not, of course, be quite as acute as if you were looking for any decisions from the Conference.

HON. MR. ROBARTS: Yes.

PROF. MEISEL: It would have to be someone, I think, of great stature who would be respected, a strong person.

PROF. McWHINNEY: Both strong and above the battle. The two things go together really.

HON. MR. ROBARTS: I hadn't thought of Mr. Frost, and it is a very intriguing suggestion, it really is. He is well known to all the Premiers, with the exception of Campbell from P.E.I.

MR. STEVENSON: There were earlier

discussions on the question of the Chairman both in the planning committee for the Conference and in the last meeting of this Committee, where I detected a somewhat different point of view. There was a general feeling among one group anyway that an outside Chairman or Deputy Chairman or co-Chairman be preferably bilingual, a person who had certainly followed the current Confederation question pretty closely, a person who had acceptable talents as a Chairman, who could guide discussion when necessary, and one who therefore could take a lot of the trickier parts of your load away from you. Of course, the big problem was to find such a superman.

PROF. MEISEL: General de Gaulle.

A MEMBER: Send a telegram to celestial regions.

FATHER MATTE: Or Gilles Gregoire.

MR. STEVENSON: I have the feeling this would still be the first choice of a number of people, but the problem of the person is the problem that brings us up short.

PROF. McWHINNEY: It is a separate issue, but is the bilingualism issue a relevant item? There is simultaneous translation.

MR. STEVENSON: Yes.

HON. MR. ROBARTS: It is not so much relevant as it would be ---

PROF. McWHINNEY: If he is a non-political type. I suppose he has to be presented as Mr. Canada Mark II, so he has got to be bilingual, but who is he?

PROF. MEISEL: Have you got somebody in mind?

HON. MR. ROBARTS: We did have some ideas but I don't whether it is fair to mention these names when we haven't mentioned it to the people involved. We have not mentioned it to Mr. Frost. One that we were thinking of was LePine from the University of Toronto.

PROF. McWHINNEY: Not distinguished enough. He is academic, not political.

THE CHAIRMAN: You are not making those terms mutually exclusive are you?

PROF. McWHINNEY: I mean, has he the standing really in Quebec? I thought you were about to say Laurier LaPierre, but I would say, "heaven forbid!".

PROF. BRADY: Surely, Mr. Robarts, you would need a public man.

HON. MR. ROBARTS: The problem we get to, Professor Brady, is that most public men are political men, and we wondered whether in this case (these were thoughts that occurred to me) whether we didn't need as Deputy Chairman or Co-Chairman (or call him what you will) somebody who was really not in

the political sphere.

Now, maybe we are more sensitive to this than we need be, or maybe I am more sensitive because I am in this area myself. It seemed to me that to the assembled Premiers it might be more acceptable if it were a competent, able, distinguished man who really had no position in the political field. Now, this may be just the sensitivities of a politician, and it may have no validity at all in your thinking. I gather really it hasn't very much.

PROF. FOX: Mr. Chairman, may I speak to that point, because I feel fairly strongly about this. I think that I side here completely with Dr. Forsey. I think it would be essential for this Conference that Mr. Robarts on most occasions would be in the chair. You may work out some such arrangement as Tom Symons or you have suggested to leave the Chair when wished to speak to a point; but I think conferences are determined really by the character of the man who is at the centre of things, and it gives the shape and direction, and it is also symbolic of the public design it indicates.

I would not really agree with your point of view at all about identification of the Conference with a political figure. I think

it is essential that you are there to conduct the Conference, in that you are dealing with what is pertinent to the whole of Canada and it would be awfully difficult to get someone who is as concerned as you are and as intimately acquainted with the problems and people involved as you are, and with the talents you have, to preside at that Conference in the very real sense that it is your conference, whether you like it or not. I think the public expects really that you will be identified with it. If it were given to some outside party, I think it would detract from the nature of the Conference; it really would not produce such a good conference.

PROF. SYMONS: Mr. Chairman, I would like to support very much/^{the desire}that Professor Fox has expressed. I think he has put the thing in the most direct manner possible. I think this is an occasion when it would be entirely accepted and appropriate for the Chairman to be a participating Chairman. My suggestion for a Deputy Chairman was really simply to provide a necessary opportunity of release.

HON. MR. ROBARTS: Of course, if we accepted that point of view, Tom, and Mr. Frost accepted that job, it would be completely acceptable on that basis.

Gentlemen, I am quite prepared to be governed by your thinking in this case. As I say, for some of us we get a little too

close to the forest to see the trees. I personally have no misgivings about the physical rigours of the task. I have been one who sits in the Legislature weeks on end having to listen with some care to every word that is said and all the rest of it, so that part of it really does not worry me.

PROF. MEISEL: Mr. Chairman, I wonder whether this would not in fact be a very nice point in the opening statement, if Mr. Robarts were to act as Chairman, if he mentioned something about this; that he had thought about this and the whole thing was discussed and he tells them something about the nature of the Conference; that this is not a formal parliamentary situation where you have got a Chairman who abides by the parliamentary rules in a very narrow sense; that this is a gathering of people with like interests, and one of them happens to act as Chairman because he is host. I think you have a perfectly good opportunity to cover this and I think you could engender something of the kind of atmosphere you want, by very briefly outlining the reasons for your being there.

PROF. SYMONS: Hear, hear!

THE CHAIRMAN: I don't want to tax the described physical endurance of the Prime Minister by getting into the lunch hour, so

I think I will try and move along.

I think actually you touched on the next point, which was the kind of caucus consultation we need along the way.

HON. MR. ROBARTS: This gets into the whole question of representation, who is going to be there. What is being impressed on me as the days go by is that there are a lot of people in Canada who want to and should be on the floor of this Conference, that won't necessarily be attached to a delegation. I am thinking of such people as Mr. Stanfield, for instance. I have had a communication from young Peter Locheed in Alberta, who is a young man in my opinion, with a long future politically in this country. These people should be there to get the sense and the feel.

Now, this is part of my question here, what we can do with the actual seating arrangements. The press, of course, have to be here, and properly so. If they are to feel the sense and mood of the Conference, this cannot be done through a television repeater (whatever you call those things). I don't know physically -- have we got a plan, Stewart?

MR. CLARKSON: Yes, we spent yesterday evening working on this one, and we are a bit afraid we may get too many people

who physically want in the room. We tried working it out on the basis of a number of seats which would be available for observers, and it is about 30, is it not, for all of Canada.

HON. MR. ROBARTS: That is not very many. How many people does that allow to each delegation?

THE CHAIRMAN: That is exclusive of the delegation, is it not, Stewart?

HON. MR. ROBARTS: There are an awful lot of people that are going to attach themselves to the delegation in order to get what ---

MR. CLARKSON: We think we have a fair idea of the number in each delegation, and over and above the numbers, we have about 30 seats which may be allocated to observers.

MR. STEVENSON: In the room.

MR. CLARKSON: In the room.

MR. STEVENSON: There is a whole lounge next door.

HON. MR. ROBARTS: How many requests have we? I suppose a good many of them rest on my desk and you have never seen them. Well, all right, 30 is better than none, but my own feeling is that there are a lot of people that should be there.

PROF. McWHINNEY: There is a

protocol problem, I suppose. You are the host, and quite obviously it is both proper, and we expect it, I think, for you to be able to invite, for one, the leaders of the Federal parties. I suppose if you wrote Mr. Stanfield, you may have to run the risk of considering whether that also includes Social Credit and some of the smaller rassemblement type of parties.

HON. MR. ROBARTS: What is the effect of this too on the attitude of the Federal Government?

PROF. McWHINNEY: Have you invited Mr. Pearson?

HON. MR. ROBARTS: Oh, yes, I did.

PROF. McWHINNEY: So I don't see how he can object if Mr. Stanfield and other people are invited.

HON. MR. ROBARTS: I don't want to exacerbate any situation.

THE CHAIRMAN: I suppose the parallel is if Mr. Johnson were calling this Conference, how would you feel if he invited the Leader of the Opposition party of Ontario?

PROF. McWHINNEY: That was the Lockheed case, wasn't it?

HON. MR. ROBARTS: We may solve this problem of space, but involved in this I feel personally that the Leaders of the two other parties in the Legislature should be there;

but they cannot be there as members of the delegation, because I refuse to surrender my responsibility as a government. Nonetheless, they should be there on the floor. Now, this means automatically there are ten others or nine others.

PROF. McWHINNEY: Would you leave that choice then -- I think Lockheed now is Leader of the Opposition,

HON. MR. ROBARTS: Yes.

PROF. McWHINNEY: Would you leave that choice to the Provincial Premier? For example, Mr. Johnson has been asked by Mr. Gerin-Lajoie and Mr. Lesage to let them come along. Is it a matter that you would allow each provincial leader to decide upon, only considering a recommendation if any pattern emerges?

HON. MR. ROBARTS: I think the only way really to do this would be to communicate with them and ask: "Do you want me to make available a place on the floor for your Opposition?".

PROF. McWHINNEY: "Do you wish them represented?", would you add that?

HON. MR. ROBARTS: Yes.

PROF. McWHINNEY: You would leave the decision to them.

DR. REYNOLDS: In your letters to

these people, you gave them complete freedom in the composition of the delegation.

HON. MR. ROBARTS: I know, but here is the point. Time goes on and we wrote that letter some time ago and the situation has changed. I suppose every provincial Premier will be forced into the same position I have been forced in, and that is to make the decision that I will not have the Opposition as part of the official delegation, but I think they should be there. I don't think anybody will want to put the Opposition as part of the official delegation. Therefore, the invitation we issued in that letter is not quite valid.

MR. STEVENSON: We have had several governments ask what will be done with Ontario Opposition leaders, with regard to what they may do with their own.

PROF. McWHINNEY: Could you not indicate in private that there would be space available to enable them to nominate as observers Opposition ---

HON. MR. ROBARTS: Of course, the second they hear that we are doing this in Ontario, they will all do this.

PROF. McWHINNEY: But if they are observers and not members of delegations, it takes care of the issue of each delegation representing the government.

HON. MR. ROBARTS: Yes, and we have two from here, and for the various provinces this is going to take 16 or 18 places right off the bat.

MR. CLARKSON: I doubt, sir, whether you can invite Opposition leaders from other provinces. I think the Premiers may take people ---

PROF. McWHINNEY: All you can do is indicate you have space available and you privately, if you decide you are going to invite your Opposition leaders ---

HON. MR. ROBARTS: If they want to ask them to come, we will give them seats.

DR. FORSEY: The position of Mr. Stanfield is quite different though.

If you want to invite any formal body as a whole, you are in a position to do so, of course. All of us are going to have seats on the floor in this Committee, from what I understand.

MR. CLARKSON: In the observer section they are.

DR. FORSEY: It occurred to me that if you are going to be really cramped for seats, some of us might take a self-denying ordinance. I should be happy to make my place available for someone who would be more useful.

HON. MR. ROBARTS: May we suggest,

if we do get to this point, we might allocate to this group say eight or nine or ten seats, or however many we have available, but we are going to have repeaters, and perfect sound reproduction, and if a block of seats belonged to you surely you could either be there or you could be in the lounge, though you wouldn't all be there at one and the same time.

DR. FORSEY: I think my own right to a seat on the floor, particularly in relation to some of these other people, I think the space could be much better occupied by someone else in many instances - I won't say by anybody else (laughter) but by a very great many people.

HON. MR. ROBARTS: I feel some sense of responsibility to make this as national a gathering as possible, and to do that there are people who will want and have every right to be there.

MR. STEVENSON: Mr. Robarts, there is the question you asked a while ago - the potential impact on the Federal Government of an invitation to Mr. Stanfield.

HON. MR. ROBARTS: It is not going to be so much an invitation to Mr. Stanfield as Mr. Stanfield is going to ask me if he can come, and once he does that I just automatically say "Yes", as I will to other public figures.

PROF. McWHINNEY: You would do the

same then, would you - he is Leader of the Opposition, though he has actually an official position in the parliamentary system - but would you do the same for Mr. Douglas and the two Social Credit groups?

HON. MR. ROBARTS: When you get down to two Social Credit groups, I think that eventually it will be very difficult but we will look at it in terms of the number of seats available as opposed to those who are asking to come.

PROF. McWHINNEY: You could certainly justify a cut-off with Mr. Stanfield if only because, of course, he has official status in the parliamentary system and the others do not.

HON. MR. ROBARTS: No, they don't really, but it is the same position I am going to be put into in my own Legislature. Mr. MacDonald is a member of the Legislature, period, whereas Mr. Nixon is Leader of the Opposition.

PROF. McWHINNEY: You don't have to be consistent as between the provincial and federal.

HON. MR. ROBARTS: We will just do it the way we think is the right way and will suffer the criticism that will come inevitably.

DR. FORSEY: Conceivably a request from Mr. St. Laurent to come and watch the proceedings, which you could certainly scarcely

turn down.

HON. MR. ROBARTS: That is quite correct.

PROF. McWHINNEY: Or Mr. Diefenbaker.

PROF. MEISEL: These people have simply been invited as observers.

HON. MR. ROBARTS: Yes. The point about being an observer is simply the fact that there will be a seat for you in the conference room itself. As far as the press is concerned, how many have we allocated to them?

MR. CLARKSON: We have something over a hundred in terms of seats available in the room for the press.

MR. STEVENSON: But quite undesirable seats compared to the observers.

THE CHAIRMAN: The cheap seats.

MR. CLARKSON: They are in the room but behind the TV cameras.

HON. MR. ROBARTS: I want to go over this with you, because there may be some adjustment.

DR. FORSEY: I am not prepared to give way in favour of any dashed journalist that comes along.

HON. MR. ROBARTS: I can only say this, Mr. Forsey. We expect probably 400, at least 400 people from the press, so that for every one on the floor there are going to be

three some place else where the repeaters are, and there is no other way of doing it, because some newspapers will send, say, four or five men. They will have one seat, and then they have got to decide, as they work out their journalistic endeavours, who is going to be there.

THE CHAIRMAN: Are there any other matters now or would you want to adjourn for lunch? You did mention one point to me, Tom, with respect to the opening statement, which was the last item.

PROF. SYMONS: Just a small point, Mr. Chairman. I think that Professor McWhinney has suggested that the tenor of Prime Minister Robarts' remarks at Montmorency struck such a welcome note from the point of view of all areas in the country that were represented there, that I think that is very much the kind of note that would be most helpful and welcome at the beginning of this Conference.

I wondered if perhaps it might be appropriate on that occasion, in addition, for the Prime Minister of this province to give some affirmation of his confidence in federalism; perhaps to take the occasion to give a statement of belief in the validity of Canada.

FATHER MATTE: It is in there already.

PROF. SYMONS: It is very much in the Montmorency paper. It is just such a good point taken by him there.

HON. MR. ROBARTS: The fact that we are prepared to smile and be optimistic that we have got a country, and we are going to do all right.

Well, I would think that opening statement can be a vehicle for several things. I like your suggestion, Prof. Meisel, that we could sort of set the tone of the thing. It would make it much easier, as a matter of fact, all around, and I would like to give some thought that within the opening statement we would also be looking to what might happen beyond. This will require some thought and working out. Then it may be that some of Ontario's basic position in this whole area will be put in there as well.

THE CHAIRMAN: Are there any other things, sir, you want to ---

HON. MR. ROBARTS: I don't think so. I just take this occasion once again to express my thanks to you gentlemen who have laboured so long and hard in this endeavour. It is quite interesting really after the months and years that we have put in here, that we are coming up to the point where we are going to get some action, but the whole evolution of

this has been to me very interesting. We started with a completely new idea, something that had never been done before, and I think we can take some satisfaction from the fact that we have been able to move things along.

I am looking forward to this Conference with great enthusiasm and great interest. I am most anxious that it be productive, and that it accomplish what we have set out to accomplish.

I think that as the result of the intense effort that has been put into it by a great many people, as I see it developing, I think it will be meaningful and will have some part in the evolution of our country, and for this I am grateful to you. That is all, Ian.

THE CHAIRMAN: Thank you very much. We have a light luncheon of the kind I suspect you are accustomed to from the election campaign.

--- The Committee adjourned at 1.20 p.m. until 2.25 p.m.

THE CHAIRMAN: Can we re-convene, please. I thought that session was extremely helpful to us. As you may have gathered, the kind of questions we were discussing were ones that have been troubling here quite a bit, and

later this afternoon we will be meeting across the way to finalize some decisions, and I could sense that the comments here are going to be extremely useful in resolving some of these questions.

I don't know if anyone has any afterthoughts or further thoughts on what was said.

PROF. McWHINNEY: Mr. Robarts must chair, I think that is clear. I think the thing has got to be under skilled direction. I think the final formula that we came up with, with Mr. Robarts chairing and with, say, Mr. Frost as standby in case Mr. Robarts feels the occasion for him to leave the chair, I think that is the only way.

PROF. MEISEL: The one thing I was not quite clear about was the matter of caucusing. I think it is important that the Ontario position is looked at very regularly and carefully; and while I am sure that the permanent officials and members of the government delegations will do a top-notch job, I think that if most people react the way I do you get a sort of sense of what happens and what ought to be happening simply by talking and listening to a lot of people discussing these things. I think there is real virtue in having a discussion now and then of anybody who is

concerned, just to allow the process and these things sinking in to depth. I don't know how this can be done, if it can be done at a conference like this.

THE CHAIRMAN: I would like some advice on that as a practical problem because of the size.

PROF. MEISEL: Quite.

FATHER MATTE: Most of us would be at the Royal York Hotel when we will meet the delegates from Quebec and so forth. Personal contacts during the Conference are most important.

PROF. MEISEL: That is part of it. I was thinking more of it internally, the business of assessing how the thing is going. Also, there may be moments when something has to be prepared very quickly by way of a short document.

THE CHAIRMAN: Yes. Well, I think we will try and ensure that those who are staying in the hotel, that their rooms are contiguous, that is, you will be able to have instant communication. Secondly, we will have a suite of sufficient size in the Royal York for meeting purposes in there, and, of course, members of our Secretariat will also be down there and living in.

PROF. MEISEL: At the Royal York.

THE CHAIRMAN: And have equipment there for the purpose of quick preparation. Then there are caucus rooms in the Toronto-Dominion Bank Centre as well; but the great value to us of having the Committee at the meeting seems to me to be that of getting your interpretations as we go along. It may be difficult as a practical matter, but I think we must do it somehow.

PROF. CREIGHTON: Mr. Chairman, will you send us a list of the various bits of information that we ought to have about the Conference, where we go, for example, to get our ---

THE CHAIRMAN: Will that be in a kit or something?

MR. GREATHED: There was not any plan for it. I think for the members of the Committee we should draw up something.

MR. SEGUIN: I would ask Don, prior to our leaving, if even our registration could not be sent to us, because none of us, it seems, come in at the same time, and it would save us a lot of leg work chasing around for a desk, if they could be sent a week ahead, even with our name card and everything.

THE CHAIRMAN: Well, we will take note of that. I am frankly not too familiar with some of these physical arrangements, but

we can note that.

PROF. FOX: Would it be reasonable to suggest, Mr. Chairman, that those members of the Committee who are present, who are available (I appreciate you, for example, might be involved in something else) we could meet maybe as a group after the afternoon session as sort of regular agreement, that after they rise at five o'clock we would simply meet at fixed times, if only to find out where we would subsequently meet. We might check with each other.

THE CHAIRMAN: I think for this the purpose I might arrange to ask/ Government members of the Committee to serve as deputy-chairmen (to use a new term for this purpose) and then, as you say, there may be times I may not be there for other reasons, but someone would have the responsibility of convening the group.

As I say, Mr. Robarts obviously even wants to meet with the Committee too in this process, but you know what these conferences are like.

PROF. McWHINNEY: Do you think it may not be necessary even to arrange for a luncheon meeting each day, with the understanding that Mr. Robarts and you and several others may not be able to attend, but at least you would

have the option of doing it. In that way, if the thing does not follow an^{orthodox,} predictable course, you have really to have your consensus groups forming and even giving you advice. Let us say somebody brings up something quite new and you want advice.

THE CHAIRMAN: I think that is a good point.

PROF. CREIGHTON: I gather each member of the Committee will not have a separate seat. There will be ten, so Mr. Robarts suggested.

THE CHAIRMAN: He was, I think, just thinking out loud on that point because, you know, behind the scenes there are some who are trying to reduce the number of press people in the room, and others are trying to increase it, and^{when} we settle that little battle I hope we will settle it on the right side from my point of view, and then we shouldn't have some of these seating problems.

PROF. CREIGHTON: I was about to say there will be occasions when I won't be able to be there, and this may also be true of other members as well. Therefore perhaps it would be a mistake to allot the full number of seats when we shall not need them.

THE CHAIRMAN: Well, as a straw vote, is there anyone who doesn't expect to be at the

Conference at all, let us put it that way?

DR. FORSEY: I am dubious.

THE CHAIRMAN: Excluding myself, there are sixteen members of the Committee, right, as potential attendants. Some of our absent friends, I don't know whether they will be there or not. You are dubious, Eugene?

DR. FORSEY: I am dubious.

I shall have to arrange to shove a lecture off on to somebody else for one thing. Then I will have to see if they will give me leave; otherwise I will have to add to my holidays. That is my reaction to it.

THE CHAIRMAN: Maybe you can get Mr. Pearson to do the lectures, as he is not going to be in Toronto. (Laughter)

DR. FORSEY: I think my stock is higher in the Liberal party than it was.

PROF. CREIGHTON: I don't think I can come to more than half of the sessions.

THE CHAIRMAN: You aren't certain?

PROF. MEISEL: I am not sure yet.

PROF. McWHINNEY: What the Premier raised was simply to have the option, he simply raised the issue as to the number of seats. It may well be there will not be an option to the whole ---

THE CHAIRMAN: I think he was protecting himself with the polite observation

that if we were really in a bind and had to take one, that no one would be deprived, because there would be the closed circuit television with perfect reproduction and, if anything, much more comfortable. In any event, the members will be present for all the social functions and luncheons. I wouldn't want to be held to this, but I don't think this will be a problem. I am confident the seating is going to work out.

DR. FORSEY: I think his remarks were partly as a result of my suggestion that my seat would be available to someone more useful.

PROF. McWHINNEY: What is the Ontario delegation apart from this Advisory Committee and the Secretariat? Do you know if Mr. Robarts made any decision on Cabinet Ministers accompanying him?

THE CHAIRMAN: No, I think that may be settled later on this afternoon, but my impression is it will be about fifteen, including Ministers and civil servants, excluding this Committee.

PROF. McWHINNEY: So it may be two or three Ministers.

THE CHAIRMAN: I would think two or three, yes.

PROF. McWHINNEY: And is it the

intention, so far as you know, of Mr. Robarts solely to speak, or to have other interventions by political representatives, or has that not been decided?

THE CHAIRMAN: I think he will probably speak almost exclusively in the case of Ontario. I don't know about other provinces.

DEAN LEDERMAN: Ian, did you say you were going to book a conference room in the Royal York for the delegation?

THE CHAIRMAN: We have a suite there or two suites. Professional people will probably have their eye on one.

MR. GREATHEAD: One was to be for the Prime Minister, and one was to be elastic, maybe for caucuses.

THE CHAIRMAN: We had better stake it out for that purpose.

DEAN LEDERMAN: We fit into the elastic one.

THE CHAIRMAN: Fluid and flexible.

DEAN LEDERMAN: If we are, I have expressed a preference for another hotel but I would move into the Royal York Hotel if it is going to serve a useful purpose.

THE CHAIRMAN: In the interests of confederation.

I don't know whether there is any

more to be said on the second session. I think the very useful point was made that we had better, if it is not too late, Ed -- is it too late to revise this in the narrative sense rather than the point-by-point sense, or is that something that the Chairman can do at the outset?

MR. GREATHED:: It may be too late now but I will certainly check and see if we can.

THE CHAIRMAN: We don't want to spoil the symmetry of the programme. Perhaps what might suffice would be a little covering note to the agenda explaining what is intended about the treatment of the agenda.

DR. FORSEY: I am sorry there is not something there, under the business of Canada's position in the world, about the under-developed countries. It says "particularly vis-a-vis the United States, the Commonwealth and French speaking countries". I wonder if it may not be worthwhile adding -- what do they call them now? I don't know the latest.

FATHER MATTE: "Developing".

PROF. CREIGHTON: Used to be called "have-not".

PROF. FOX: "Emergent".

PROF. MEISEL: To all intents and

purposes, the Commonwealth and French-speaking countries constitute this part of the world.

DR. FORSEY: What about South America?

PROF. MEISEL: I interpret them to all intents and purposes very broadly. I think you are right, Eugene.

DR. FORSEY: I have a daughter in Ecuador.

PROF. MEISEL: I withdraw my comment.

PROF. McWHINNEY: You can't be serious.

PROF. MEISEL: I know your daughter.

MR. PERRY: I was wondering under 2, Mr. Chairman, whether "international" something or other should not be introduced. I am not inclined to think of international goals, but certainly international requirements create many conflicts in Canada.

PROF. McWHINNEY: Do you want to bring the Supreme Court into that?

MR. PERRY: It makes it sound awfully complicated, speaking of international, national and regional goals.

PROF. MEISEL: I think that would be very dangerous. I am sure we would get into the business of discussing treaties, etc, or what the rights of the provinces and Federal

Government are, and if we don't really want that kind of thing ---

MR. PERRY: On the other hand you just can't make sense of any subject in this country without bringing in the international aspect.

PROF. BRADY: Then the international would be discussed anyway if you are considering national and regional; if it is inseparable from them, you will discuss it.

THE CHAIRMAN: That No. 2, of course, really opens up everything in fact about the role of the Federal Government in equalizing opportunities and advantages across the country; the role that the Federal Government should be playing where the regional requirements differ greatly in parts of the country. Certainly could take us right into very quickly those items which are treated in more detail over on to the fourth session. On the other hand it has the advantages, speaking of regional as opposed to provincial.

PROF. McIVOR: What kind of regional or national goals were envisaged by the Premier in this question, primarily in economic roles, and in contrast national and regional?

THE CHAIRMAN: Do you recall that, Ed?

MR. GREATHED: I think primarily

economic ones. I think also perhaps even cultural ones, if there were differing opinions in the view of what Canada was in various parts of the country, but I think primarily they were economic.

PROF. CREIGHTON: Surely they must be all those listed in No. 1, aren't they, the first section? Those are the goals, concerns.

MR. PERRY: The emphasis is primarily national versus regional. I am sure Lou Rasminsky is very conscious of the kind of inhibitions he is under because of international complications.

PROF. McIVOR: I am concerned about this same point, that to the extent we are, if we are primarily concerned about economic matters, then perhaps we should specifically indicate the international context.

THE CHAIRMAN: As a matter of practice, in dealing with the problems that are in the minds of all of us in Canadian federalism, how far do we want to get into the international realm? Presumably this first session is just sketching the landscape; it is not dealing with the problems.

DR. FORSEY: Defense is likely to get into the picture somewhere, the possibility of what is spent on that being made available for

other things. It is perhaps rather marginal, but it might easily come up, because you get a certain amount of talk about this, both among the Quebec nationalists and N.D.P.'ers and you even have Mr. Camp making remarks on foreign policy which, if I understand correctly, would suggest that our defense requirements would be much smaller if he had his way, and therefore more money presumably would be available for equalization payments or more tax fields for provinces or what-not.

THE CHAIRMAN: You could make a very interesting equation there - a massive reduction in defense and massive outlay on education.

PROF. McWHINNEY: But you might also make the case - and this is something that poor old Paul Martin and the Defense Minister get every month: "Pull out of NATO." The only thing is defining where. Some say "give it to technical assistance"; some say, "give it to the U.N. fund in the Congo"; some say "give it to education". I think it is a non sequitur to make the connection between production and federal expenditures and defense. Let us say "foreign policy and particular provincial goals". I suppose you can say that the economic expenditures of the Federal Government are going to decline

as the defense establishment declines.

PROF. BRADY: Or somewhat stress greatly the necessity for examining external aid.

PROF. McWHINNEY: This is it, and Paul Martin says he gets this every second day. They say "pull out of NATO and spend the couple of millions on technical assistance"; but it was supposed, of course, to have been one of the arguments for integration of the services that you would get a corresponding reduction in federal expenditures.

PROF. MEISEL: I wonder whether with all the problems that bear on the interests of the provinces, we ought to get very far into areas which are clearly within federal jurisdiction. There are obviously 12 implications of federal policy for the provinces in this area, but it seems to me there are so many things that are much more relevant to the provinces, that it would be perhaps better to concentrate on those at this Conference and leave the others till later.

PROF. McWHINNEY: This is what is called a proper appreciation of the roles and missions; that foreign policy attitude towards NATO and the like is federal territory. It only is really interstitial, that is, when you arrive at your position where you get part of

Court's position placed on international law implications, that it comes in, and then it is better to handle that in the interstices of the Supreme Court discussion or discussion of natural resources. I think it would be offensive to this general principle of federal privity to take up foreign affairs as such, defense, foreign affairs.

DR. FORSEY: Under "Goals" though, there are certainly international goals, or many people think there should be. As you say, they will probably come up somewhere, but perhaps it will be well to keep it in the back of our heads.

MR. PERRY: You can put this in very pertinent context if people pay high interest rates, because the background there is the sort of manouevring that the central bank has to go through, largely dictated by our international monetary position. You can't make it much more practical than that.

THE CHAIRMAN: This may be splitting hairs, but the theme is the goals of Canadian federalism, not the roles for Canada. In other words, are we really talking about a technical exercise in the analysis of the federal state or are we looking under this more to the sociological aspect of Canada?

MR. PERRY: The real problem is we

are trying to compress some very large issues into two lines here. Perhaps we had better leave it as it is here and let what come of it may.

PROF. McWHINNE: I don't think we should underestimate John Meisel's point about infringing on federal prerogatives; and nothing is more effectual, for ordinary public consumption, infringing on federal prerogatives than for the provincial Premiers to be discussing in consultation foreign policy or defense - unless it is very clearly and precisely rendered as simply external manifestations of domestic policies. I think we have got to fill in this background to avoid lending support to the charge that Ontario is getting into federal prerogatives.

MR. MAGONE: I agree.

DR. FORSEY: Yes, but in that case you have got various things here: "What are the common concerns of all Canadians in 1967?". Then you have: "Canada's position in the world". If you are going to take a narrow interpretation of the goals of Canadian federalism, then you can't simply say: "What are the common concerns of all Canadians in 1967?"; you would have to narrow this. Then you certainly couldn't bring in Canada's position in the world, particularly vis-a-vis the United States,

Commonwealth and French speaking countries.

PROF. McWHINNEY: Except I think if somebody started launching into policy on NATO or defense, they would suggest it was not relevant for the purposes of this particular Conference.

PROF. CREIGHTON: What do you talk about?

DR. FORSEY: Then American investment.

PROF. McWHINNEY: American investment is a legitimate matter to discuss. As with all tests, the realm of pragmatism is there, but I think foreign affairs as such must be outside the competence.

MR. PERRY: I wonder, Mr. Chairman, if we are not trying to be too precise in formulating the agenda. It seems to me after what Mr. Robarts said about admitting almost anything for discussion, we are really perhaps not spending our time as usefully as we might, by trying to be precise about these things in detail, unless we are proposing ideas to delegations from other provinces.

DEAN LEDERMAN: I think this is about as good an agenda as you are going to get. There is no profit in changing words here and there.

THE CHAIRMAN: Let it sit? Let us get into the substance. I think one could

almost predict the exact character of that first day, that it will be all over the waterfront and people get everything out of their system anyway.

MR. SEGUIN: That is right, that is what it will be the first day.

THE CHAIRMAN: Then it will be settled down, and I think the precision, if any, will begin next morning. So turning to the third session ---

MR. MAGONE: May I speak to question No. 2 on page 2: "What are the major conflicts in Canada between national and regional goals?". Now, are there conflicts between national and regional goals? Surely the goals are the same. There may be a difference in programmes.

THE CHAIRMAN: The means may differ but the ends are the same.

MR. MAGONE: Yes, I mean the goals are the same goals. They all want to do what is best. They may be going the wrong way about it. Their programmes may be different, but it says: "What are the major conflicts in Canada ---" presuming there are conflicts - "between national and regional goals?".

PROF. McIVOR: You might say though that the goal of the Federal Government is to maximize the rate of economic growth in the country as a whole, and the goal of the province

of Ontario is to maximize the economic growth in the province. There are certainly conflicts between those goals.

MR. MAGONE: All right, that is what I am trying to find out, what they are.

DR. FORSEY: It would even apply more strongly to other provinces. The goal of maximizing the income or G.N.P. of the country as a whole mightnot be by any means the same as maximizing any of those things for Nova Scotia, New Brunswick, P.E.I., Newfoundland or Saskatchewan, Manitoba - any province.

DEAN LEDERMAN: Mr. Stanfield in another capacity once complained that Nova Scotia had to take the castor oil when Ontario had the tummy ache.

DR. FORSEY: There may be certain economic conflicts there in goals.

THE CHAIRMAN: Great potential in that metaphor.

PROF. SYMONS: Where does that leave the rest?

DR. FORSEY: This would apply also to Quebec very obviously, that would have certain economic goals, the maximization of income in Quebec, which might very well run counter to the same thing for the whole country. They might not want to have maximum mobility of labour across the country, for quite understandable

and legitimate reasons if you accept certain assumptions.

PROF. McIVOR: You could put the question in quite general terms, just: "What are the major obstacles to the attainment of these goals?" and let the discussion go where it goes.

PROF. CREIGHTON: I think that is better.

THE CHAIRMAN: Yes, that could be.

PROF. McIVOR: That avoids the limited distinction between national and regional.

THE CHAIRMAN: That would help it. That has touched a good nerve. The third session, this is a very heavy diet too for 10.00 a.m. to 12.00 noon.

PROF. CREIGHTON: I am not sure I know what that first one means.

PROF. McWHINNEY: This is page 3, Donald?

PROF. CREIGHTON: Yes.

THE CHAIRMAN: Well, let us try and anticipate a bit the mood of the Conference. I imagine when the Chairman opens the subject, this is the place where those who have strong views of one kind or another will immediately launch into their propositions. I think there may be some difficulty getting back to the

agenda items from there.

To answer your point, would I be correct in recalling that the underlying notion there was to suggest that the linguistic and cultural situation could be treated quite separately from the economic and financial or fiscal; that one need not confuse what might be right or wrong or wise or foolish with respect to linguistic and cultural matters, with the other question of economic practice?

PROF. CREIGHTON: I think there is a relation and a close one.

DR. FORSEY: This is widely maintained, especially in Quebec, and even to some extent in New Brunswick.

One of the reasons, as I surmise at least, for Mr. Robichaud's equality of opportunity measures, was that he wanted to give some kind of economic and educational underpinning to the French speaking people of New Brunswick, because otherwise, in spite of their numbers, the chances of their survival as a French speaking group were likely to be pretty limited and get more limited.

Similarly you can find argument, I am very much impressed by the argument as far as the internal arrangements in New Brunswick are concerned, in fact I accept that completely, I think; but the similar argument

from Quebec that it must have very special economic powers and this kind of thing because of the position as the chief home of French Canadians in the country, this I think is a more arguable proposition, but certainly it is a proposition which you get brought up, that Quebec must have extra powers in the economic realm and must have more taxing powers and so forth. The conflict may not be all that it is made out, the relationship rather may not be all it is made out to be in some cases, but I think when you get to the argument you will get it put very forcibly.

PROF. MEISEL: There is the other side too - certain economic goals affected by whatever linguistic aims the country wished to pursue. For instance, if you want to have the C.N.R. run from Toronto to Montreal with bilingual conductors, this is going to make it a more expensive run than if they used their unilingual conductors. So you have this kind of costs that are imposed by the linguistic facts that might be looked at.

PROF. FOX: I imagine you will get that argument - Alberta, for example - that it is a very costly procedure and therefore indirectly conflicts with economic goals.

MR. GREATHED: You will get it from Nova Scotia too.

PROF. CREIGHTON: Why not put this one last, after you have dealt with the questions which, on the face of it, are really amplifying.

MR. GREATHED: If I may just comment here, originally it was last and the problem here was whether we were going from the particular into the general, or whether we should proceed from the general into the particular. I think the final decision was that we should start with the general and proceed into the more particular one. This was the way it came about.

PROF. McWHINNEY: I actually thought you compromised. That is why I praised this morning the felicitous combination; that rather than making a clear-cut choice, you have made a synthesis of the two approaches.

PROF. BRADY: It almost seems it is more logical to have No. 2 at the beginning. It is an informational question, as it were: "What recognition is now afforded to the English and French languages?". Then you may go on to what are some of the implications of economic, fiscal and what-not.

PROF. McWHINNEY: I take it though it is neither competent now, nor is what you are inviting, Mr. Chairman, an alteration or change of the agenda. This has been sent to the provinces. What we are doing now, is

it simply discussing background that might be relevant for you to pass on to Mr. Robarts? The agenda is not up for re-examination; it has been communicated to the provinces and agreed on, isn't that true?

THE CHAIRMAN: Yes, but I guess what I am seeking guidance on now is what meaning you think these items really contain, because it has been occurring to me in a rather frightening manner that we are going to have to, as chairman, brief him very fully on this, because he cannot suddenly (God preserve us) turn to me before the national television camera and say: "What was this one meant to be?".

PROF. McWHINNEY: I thought that is why there is no live coverage. There is in fact no live coverage, is there? Otherwise there will be some embarrassment.

THE CHAIRMAN: So I would like to get pretty clear what it is all about.

PROF. BRADY: In other words, there may be an agenda which will explain the agenda.

THE CHAIRMAN: Exactly, that is it.

PROF. FOX: You may find there is some pressure in that connection from the press people too.

THE CHAIRMAN: I am sure when this comes out - the objective of getting the agenda

first was to get them to stop writing about what the Conference was not going to be, and get them focussed on what it was going to be, but it goes on and I can see already phone calls pouring in for explanation of what this and that means.

PROF. McIVOR: It seems to me that questions 2, 3 and 4, provide for much wider discussion, intense discussion, than question 1, which is sort of marginal, related in a particular corner, and logically it will be better to get into these broader issues of 2, 3 and 4 and, if time permits, to come back to a more specific, limited question such as No.1, just as a matter of procedure. Attention to No. 1 should come late in the game, rather than try to start off with it.

THE CHAIRMAN: 2, 3 and 4 really ask what should be done, and 5 talks about areas in which it could be done, if it is to be done. The first is one of those theme-setting statements, but it seems it does not set the theme too well.

MR. PERRY: It is really just a subsection of question 2 in the opening section: "What conflicts are there particularly between ...".

PROF. McIVOR: It does not seem to be in the right place in question No. 1.

THE CHAIRMAN: I think we are going

to have to take account of this, Ed. It would be better now than later.

DR. FORSEY: Are we still on page 3?

PROF. CREIGHTON: We are indeed, Section 1.

DR. FORSEY: Really? I thought we had got past that. I thought there was some reference to 2, 3 and 4 a few moments ago.

PROF. McWHINNEY: Comments may apply to all of them.

DEAN LEDERMAN: Is section 1 intended to raise the question of the need for French, for instance, to be the language of industry and commerce in Quebec if it is to survive? Is that the sort of question it is intended to raise?

MR. GREATHED: I think it is part of the question.

PROF. McWHINNEY: There will be no objection to anybody discussing it. I take it most people won't discuss it.

DEAN LEDERMAN: I don't know the answer to that question, but it has been raised at other times. In fact Quebec people themselves are raising it.

PROF. McWHINNEY: I think most people are taking the view that business will be determined by business efficacy.

DEAN LEDERMAN: There may be any number of factors.

PROF. McWHINNEY: I don't think the French commercial community is taking such an attitude. You conduct your business, if you are in Hong Kong, in English. I mean, I don't think any strong partisan of language rights is suggesting that you make a compulsory rule. That would not be realistic any more than that diplomatic language should drop French.

DEAN LEDERMAN: It wasn't raising the question of compulsion, but raising the question of whether the culture should survive and thrive by educational and cultural measures like radio and television and so on, or whether you should go into the economic realm as well.

PROF. BRADY: Surely that question is raised.

DEAN LEDERMAN: That is quite a question.

PROF. BRADY: It is an important question.

DEAN LEDERMAN: Very vital question, and I think it is raised by (1).

PROF. McIVOR: Then it should be part of the discussion in question 3.

DR. FORSEY: How much can you put into the constitution of the language of private

business?

PROF. McWHINNEY: You can't. That is why I am surprised to hear any sort of suggestion it is being demanded.

DR. FORSEY: You could certainly have an Act of the Quebec Legislature providing, for example, that collective agreements between unions and employers in the province of Quebec must be drawn in French.

PROF. McWHINNEY: Or that Land Title instruments should be, but the language of business intercourse - if two Portugese meet they talk Portugese in Montreal.

DR. FORSEY: How could you possibly enact a constitution providing that if Donald Creighton and I were doing business away in Quebec we had to do it all in French?

PROF. CREIGHTON: You couldn't do it, that's the answer.

DR. FORSEY: We would refuse to sign the thing.

DEAN LEDERMAN: I hope no one thinks I am proposing that, but this does not ask what constitutional measure should be taken; it asks what is the relationship. I assume that is a matter of social and cultural fact. I was only addressing myself to that issue of relationship. You can go on and say, as one says of many things, that there is nothing

constitutionally you can do about this.

That in itself is a useful conclusion.

PROF. BRADY: To ask something to be done constitutionally indeed is in fact something very doctrinaire in the way of objective, but nevertheless there is a situation there. How it may be corrected is difficult to tell but there is the situation certainly that people in Quebec feel strongly about.

DR. FORSEY: Whatever measures are taken legislatively, it would seem, are already in the ambit of the jurisdiction of the province of Quebec, at least to a very large extent, and is hardly a problem for Confederation as a whole. If you are going to talk about the extent to which you can make French the language of business in Ontario, you are dealing with another question and one that is not going to bulk very large. New Brunswick perhaps, but even in New Brunswick the Legislature itself, it seems to me, could provide for anything it wants to about the language of documents.

PROF. MEISEL: I don't think there is much point in our discussion. We are getting to the point where we are discussing the subjects, what the Conference will be talking about. It seems to me the purpose

of the agenda is to make it possible for the delegates to talk about matters they consider to be important, under some general headings; and this agenda particularly page 3, is so fantastically long anyway that some of these items will not be touched. I think what this permits is for the delegates to talk about those things which are most important to them. On the other hand, as members of Ontario, we can suggest, after all, things that are important to us and leave it at that.

Now, the fifth point, for instance, each one of those problems could be the subject of a conference of its own, and maybe if we are looking for suggestions at some point about what might be done in the future, this fifth point could be looked at in that light.

PROF. McWHINNEY: You can see what Mr. Johnson will zero in on immediately. I take it the Chairman certainly is not going to object to Mr. Johnson, if it was any point of relevance, wanting to discuss the matter just referred to - language in commercial affairs; but he is a very sensible, pragmatic man, and it is clear that he will zero in on 5(e) "broadcasting facilities" because that is current and there is a Quebec position.

PROF. BRADY: It seems to me that 5

could be dropped almost altogether. The Bill of Rights is again listed in the fifth session under Topic 1.

PROF. MEISEL: I wonder if it should be put on the agenda for this Conference?

PROF. McWHINNEY: It is there. If you take it off now, and take out broadcasting facilities, which is Quebec asking for its own network in the province, you can't possibly do it.

PROF. BRADY: Wouldn't this better come in the fifth session, broadcasting?

PROF. McWHINNEY: It might have better come. I think now it is a change in an area of high political importance. I think if this has already gone out ---

THE CHAIRMAN: I think Eugene Forsey answered the question on broadcasting that time at Banff a few years ago.

PROF. McWHINNEY: What did you say?

DR. FORSEY: You mean Faribault answered that question, Andrew Stewart's question.

THE CHAIRMAN: I thought it was your reply.

DR. FORSEY: Andrew Stewart piped up in one corner that it was not clear to him from Mr. Morin's proposal who was going to pay for the broadcasting.

PROF. McWHINNEY: This is Jacques Yvan.

DR. FORSEY: Yes. He didn't mention broadcasting but it was implied there was to be a French language network and English, referring to both television and radio. So Andrew said: "The maintenance of the culture is a very expensive thing. The maintenance of two cultures is even more expensive. I am thinking, of course, primarily of radio and television. The maintenance of a complete French radio network and a French television network right across the country will cost a great deal of money. So who, under Professor Morin's scheme, is going to pay?". So there was a most dreadful consternation and all the French speaking delegates gathered in a huddle around Faribault and Faribault gave a magnificent oration on culture, ending up with: "Quebec cannot pay. The federal authority must pay.". But this does not exclude, of course, the possibility of the federal authority contributing a large sum into financing a provincial responsibility.

MR. SEGUIN: But why? The network is controlled by Quebec people. I can't understand that. It is not Ontario or Manitoba people that are in Montreal; it is all Quebec people, and they get it free, \$32 million worth of it last year.

DR. FORSEY: I couldn't agree more,
Roger.

DEAN LEDERMAN: Do you tell us
General de Gaulle will put his satellite into
orbit at the right moment at the end of the
month.?

MR. SEGUIN: They tried to get
ten films from France and they refused.

PROF. BRADY: I think, Mr. Chairman,
we may get off on details.

DR. FORSEY: It seems to me the
particular part of the Bill of Rights that we
can put on page 3 is quite distinct from the
general stuff about Bill of Rights developed
on page 5. I would assume here you would
not go into the whole question of Bill of Rights
or no Bill of Rights or general contents of the
Bill of Rights, but cultural and linguistic
rights, a bill of cultural and linguistic rights,
what you can do about it, what kind of thing it
will be, whether it is advisable to try it or
whether it is not.

PROF. BRADY: I was going to say,
perhaps we are going to get to details that are
interesting and important enough, but we have
to get through this agenda and it is not the
only part. I thought that No. 5 in the
third session might somehow be consolidated.
It looks formidably wrong there.

THE CHAIRMAN: One might say "for
example".

PROF. BRADY: Something like that

THE CHAIRMAN: And then a continuous line.

PROF. FOX: I wonder, Mr. Chairman, if our difficulties are not arising from the fact that we are referring to this as an agenda when in effect it is not an agenda at all, it is an outline of possible discussion, is it not? We are touching on the various points that might be raised, but we do not assume that the Chairman, for instance, is going to run his finger down this list and force discussion on each of these items.

I think that some of our difficulties in this discussion might be clarified if we looked on it not as an agenda, which I think most of us have been looking at it as, but as merely a suggested outline of topics for possible discussion.

THE CHAIRMAN: Perhaps that is a good point. Perhaps we should consider calling it an agenda as it is on the covering page: "This agenda is subject to change". Clearly it is.

PROF. McWHINNEY: An outline of various discussion points.

PROF. BRADY: That confirms, Mr. Chairman, what Mr. Robarts said this morning.

THE CHAIRMAN: Yes, that it is really the type of questions that arise in these realms.

PROF. FOX: That is right.

THE CHAIRMAN: And it is more to guide them, just to get over this opening hurdle. Once you are over that, I don't think there will be any problem.

DEAN LEDERMAN: Do you want to call it a framework for discussion, something like that?

MR. SEGUIN: "Suggested topics for discussion".

PROF. FOX: You have got it right here, "Topics". All you need is "Possible topics for discussion", something of that sort.

THE CHAIRMAN: In a little thing in the front we had better extend it in terms of what we intend the purpose of this Conference to be, and I think it should clarify a lot of these worries. That is a very helpful suggestion indeed.

Let us come into Tuesday afternoon. That is going to be quite a day, with the language in the morning and the whole special status business, etc., the options in the afternoon. I think this is the range of options such as they are.

DR. FORSEY: I would hope that 1(e) would get rather short shrift, if it is possible to steer people away from it. If it is possible for the Chairman gently to edge people away from a lengthy discussion of that, it seems to me to be advisable, because

PROF. McWHINNEY: What is that?

PROF. CREIGHTON: Increase or decrease in the number of provinces.

PROF. McWHINNEY: It is interesting, though, because you can make a case.

DR. FORSEY: Pretty slim one. It was discussed in Nova Scotia at a conference a couple of years ago and I think it was perfectly obvious that it was peanuts. A great many people have the notion that you could save a terrible lot of money this way, but this is wrong.

PROF. McWHINNEY: By decreasing, you mean?

DR. FORSEY: The number of provinces.

PROF. McWHINNEY: If you follow the current European practice of making certain cities into city states, you can certainly make a case for detaching Montreal from the province of Quebec and have a lot of sense to it. If you follow the West German federal precedent, you make up big cities into provinces. In other words, it is one of the limiting arguments against complete constitutional ---

DR. FORSEY: I am scared of people getting into a discussion of re-allocating the Atlantic provinces, because it is a natural waste of time.

PROF. BRADY: It is not a very practical issue at the present time.

PROF. McWHINNEY: I don't think they will raise it, Alec, I think you are right.

THE CHAIRMAN: I suppose one hears less discussion these days of increasing or decreasing the number of provinces, than one hears of this city state concept of big metropolitan areas. This, of course, it seems to me, as an economic proposition raises profound problems, because if you were to carve Toronto or Montreal out of the provincial core, the question of the viability of the rest of it would be interesting.

PROF. McWHINNEY: Think of the pleasure for the Toronto, Montreal citizens.

THE CHAIRMAN: After all, one has not been able to muster a civic centre in Toronto with the rest of the province to support it.

DR. FORSEY: You might end up having a city state of Toronto extending from Port Arthur to the Quebec border.

PROF. CREIGHTON: Laurier LaPierre was proposing a new province up in northwestern Ontario.

I wonder whether there is any need to put that in?

PROF. McWHINNEY: Well, it is in

there already.

DR. FORSEY: I was expressing the hope that if people get into it too deeply, the Chairman will steer them away from it. I doubt whether this is something that interests anybody except the high-flying theorists.

THE CHAIRMAN: The statements I have seen recently that Mr. Campbell had made on this subject, have seemed quite interesting; that he would, if approached, study a Maritime union,

PROF. CREIGHTON: He is keen, eh?

MR. PERRY: Subdivide Prince Edward Island.

MR. GREATHED: I was told in Nova Scotia, when they saw an earlier draft of this which included that point, the Nova Scotia comment was: "Mr. Campbell will fasten on to that one quickly" and it may be that he will too.

DR. FORSEY: I think that if much time is spent on it it would be a sad waste of time.

DEAN LEDERMAN: If Mr. Campbell would fasten on it, it is good reason for having it there, in accordance with what Mr. Robarts said.

THE CHAIRMAN: It will ensure that Prince Edward Island's view is heard in the

discussion.

PROF. CREIGHTON: You might as well give Prince Edward Island something to fasten on, because Quebec has enough in this agenda.

THE CHAIRMAN: They want to fasten that causeway anyway, don't they?

PROF. CREIGHTON: That wouldn't be bad anyway.

THE CHAIRMAN: Are you in the mood to slip over another page, and we come to the fifth session.

PROF. FOX: I already feel I have been at this Conference ten days.

THE CHAIRMAN: As you say, I can see the heads nodding and the yawns. "Ways in which the federal system could be improved".

PROF. CREIGHTON: Mr. Chairman, the constitutional committee was pleasantly congratulating itself a little while ago on the fact that in topic 1 we have, I think, submitted some kind of statement or position paper, as called nowadays, on every one of these items.

THE CHAIRMAN: Yes, we have got more than one on the Crown now, since you last met.

DR. FORSEY: Oh, rather, yes.

PROF. McWHINNEY: Have we anything on "Other areas of the constitution"?

THE CHAIRMAN: How many people have

had an opportunity to read Professor Conway's paper? He was anxious to know.

PROF. McWHINNEY: I will read and mentally digest over a limited period of time.

MR. PERRY: I am halfway through it. It is an excellent paper.

DR. FORSEY: May I ask, I hope, a less than facetious question under number 1, the last item "Other areas of the constitution"? What sort of things had the drafters in mind?

PROF. McWHINNEY: Do we have a position paper on that? We must have.

DR. FORSEY: I don't remember it.

MR. GREATHED: I think the point was we didn't want to lock it into these four points. If other people thought of other areas or wanted to raise other things which they might want to discuss, this was the way to do it.

PROF. McWHINNEY: Treaty-making power - international agreement, powers of provinces would come in here.

MR. GREATHED: It could.

PROF. BRADY: Distribution of powers, you say?

PROF. McWHINNEY: Yes, 91 and 92, and so-called residual power, and perhaps natural resources except submarine oil.

PROF. BRADY: I think an example is financial institutions, which seem to be a rather uncertain zone. There are various questions of distribution of power that can be

raised.

THE CHAIRMAN: I would like to get your opinion on one matter in this connection. The people in our Securities Commission, as you may know, have been floating an idea called the Cansec proposal, which is the Canada Securities proposal. Now, this arises out of the fact that securities regulation and legislation has been a provincial matter, but there have been increasing suggestions that the federal government must take some greater initiative, because the capital market is a national institution and our capital market in particular is closely bound up with the international capital market, and there are certain areas of inter-provincial trade and certain areas under federally incorporated companies that are not well met in the provincial jurisdiction and so on.

The question has been: should there be a federal securities commission introduced? This led our securities people to suggest that what was necessary, rather than a duplication at federal level, was this Canada Securities Commission.

I am a little shaky on all the details on it, but the idea would be, using the advantages of electronic communication where you could have a central repository of

information and this sort of thing fed in and out; where you would have the controlling body under a Board of Directors representative of the different jurisdictions, and you would have a practical and administrative form of co-ordination and co-operation working through the various centres.

Without knowing any more of this detail, the point of interest here was that this was a new kind of practical device to meet a practical problem within the present federation, without having to get into this business of shoving over jurisdiction from one place to another where there was clearly an interest by both levels of government.

They have written a little paper to explain this, and to illustrate how this might serve as an example to quite a number of functional areas in Canadian federalism. We have got this paper and we have begun to talk among ourselves whether it would be wise or not to make this available as another background paper, as an example of the kind of novelty of thinking in another area. The reason I have hesitated a bit about it is that again, it is a specific and one does not want to get into debating the merits of Cansec in this group or in this Conference, but on the other hand the paper is very interesting as an

example of the type of novelty approach to Canadian federal problems.

Now, you have not read the paper and it is a little difficult to ask you what you think, but from what I have said, do you have any sense of response on this at all?

DEAN LEDERMAN: Mr. Chairman, this would be, I suppose, what they are thinking of is a joint board?

THE CHAIRMAN: Yes.

DEAN LEDERMAN: A joint federal-provincial board which would have delegated to it the necessary powers?

THE CHAIRMAN: For joint decision making.

DEAN LEDERMAN: Proceed both ways in somewhat the same manner as the provincial board gets a federally delegated power - marketing board for instance - and this is theoretically possible now under the constitution. The difference with this joint board would be that some of the directors would be federally appointed and some provincially appointed.

THE CHAIRMAN: Quite so.

DEAN LEDERMAN: But the federal directors would have the benefit of the provincial jurisdiction and the provincial would have the benefit of the federal

jurisdiction, and the directorate as a whole would have two powers in their hands, so to speak. This is feasible and there is nothing constitutionally against it, I don't think, provided they do not try to delegate the primary law-making powers, provided the main policy is agreed between the Parliament and the Legislature and the main policy is laid down in the master statutes. Provided there is enough agreement on the main outlines of policy, the main guidelines of policy, then I think this kind of thing will work at the administrative level and at the subordinate regulation level; but if the main political decisions, main line of policy have not been taken at the top, then it won't work, because in the directors you haven't got people who can take that kind of position.

PROF. BRADY: They would really be only administrative, if I understood your ---

THE CHAIRMAN: Yes, that is right. There would be an administrative board, and then they would have a policy council. This is where I got a little shaky. The policy council would meet, say, four times a year; would consist of the Ministers who are responsible for these realms, but it would be policy co-ordination once more rather than legislative policy-making, so to speak.

PROF. CREIGHTON: There would have to be legislation to begin, both of the provinces and the federal government.

DEAN LEDERMAN: I dealt with this in the paper on co-operative federalism that I submitted earlier in the Fall and used this briefly, this served as an example; but on thinking it over during the summer and writing the paper, it seemed to me that you had to make this distinction between administrative delegation and legislative delegation, and that this sort of thing will not work at the level of high legislative policy, and that is what you are leaving to the directors.

THE CHAIRMAN: Well, I think this is a distinction that is a proper one.

DEAN LEDERMAN: But you might get away with it at the administrative level - the sort of things that have been attempted so far and that have worked, have been a simple case of a provincially-appointed board, entirely provincially controlled, but having some very limited federal delegation on it, such as motor vehicles board and marketing boards. These things have worked so far, but anything which is complex has not yet been tried, but it is theoretically possible to try it.

THE CHAIRMAN: Cliff, what do you think about it?

MR. MAGONE: I didn't get exactly what the scope is, but there must be two sets of legislation.

THE CHAIRMAN: Yes.

MR. MAGONE: One would be provincial within its sphere, within its power to pass now; the other would be federal legislation that only the federal could pass. Then you would set up your board and the province would give that board power to pass regulations which would be legislative, and also administrative powers. Then the Dominion would similarly give the power to the board to pass regulations under federal Act and also the administrative power.

I think they would have to pass two regulations, as they have today under the Farm Products Marketing Act, one under the provincial Act acting as a provincial board, and one under the Federal Act acting as a federal board.

It is a very complicated arrangement. It is much more complicated, you see, than the Dominion giving power to a provincial board, but I suppose it might work. For the time being I can't see where Dominion power would come in to control a business in the province.

THE CHAIRMAN: Peter Venton has been

working over this paper that came in from the Securities Commission. I have just asked him to come in for a minute and perhaps give us one or two details; because I could envisage in this kind of discussion where one goes around the same old circles again, and having a fresh example to fill in might be useful at any time.

MR. PERRY: I wish you could find one from another province, though. It would look a little bit as if you are promoting your own province.

THE CHAIRMAN: This is the other thing why I am not certain it is appropriate to introduce, for that reason; moreover, because it is not a matter of government policy here. It is an idea of the Securities Commission and I wouldn't want it to take on more authority than it has.

Peter, have you had a chance to get into this Cansec paper?

MR. VENTON: I have read the paper over briefly. I have an idea of some of the major elements in the proposal.

The major one is a centralization of administration for securities regulation; and in order to get around the fact that every province, of course, has constitutional jurisdiction in this area, they have been very

careful to state that they are centralizing the administration as opposed to the law-making or legislative aspects of the plan.

Now, one of the requirements that they think they will need is some modification of existing legislation in different provinces. There will have to be certain, what they regard as, small degree standardization under the different provincial legislations, but that after that the main feature of securities problems in this country comes through the administration. Apparently in the existing legislation much of the effect of it comes through the discretionary powers of various Ministers or that their Deputy Ministers have.

The basic organization, I cannot remember the name of it, but the Ministers of provincial governments and the federal government would be on top of the organizational structure. Underneath them would be a commission similar to the Securities. Under them, I believe, is a system of directors to run the day-to-day operations. The Commission can sit regionally, but the three main regional centres are Toronto, Montreal and Vancouver, I believe. Not all commissioners sit at the one time, so that they may presumably have commissioners sitting in at these three centres.

That seems to be the major outline of the structure that I have picked up from just reading through here. The main feature, of course, is the centralization of administration, to get around the fact of jurisdiction divided among provinces.

MR. MAGONE: I would think the powers of Parliament to deal with a situation of that kind would be confined to inter-provincial trade in securities. It might have some jurisdiction there, but I would not be satisfied that merely because a company is incorporated by the Dominion, that it takes it out of the power of the province to legislate, dealing in securities within the province, as long as the legislation did not destroy the capacity of the Dominion company.

MR. VENTON: Excuse me. The power to legislate, I believe, is still maintained within the provinces. There could be ten different acts. It is just that the administration is the central body which will administer different acts.

MR. MAGONE: Then again the power of the province to legislate in regard to the sale of goods, or sale of securities, stops at the border of the province and cannot deal with inter-provincial trade in securities. That is the Dominion legislative power.

MR. VENTON: But the beauty of this organization, at least this is one of the points it makes, that it doesn't really matter; you don't have to make the distinction with the centralized administrative body.

MR. MAGONE: As I said, Mr. Chairman, the administration and federal legislative power can be given to the board. It has the power to make regulations under the two Acts, and they change their hats each time they meet. When they are making one under inter-provincial trade, they would be sitting as a Dominion board.

THE CHAIRMAN: Yes.

DEAN LEDERMAN: I think the power to compel hearings, require evidence, inspect books, this kind of thing is very important in this type of scheme anyway, and some federal legislation in aid might be helpful there.

MR. MAGONE: Could be.

DEAN LEDERMAN: This has been one of the handicaps the Ontario Securities Commission has had in relation to brokerage transactions which took place in British Columbia but which were certainly related very specifically to events in this province.

THE CHAIRMAN: I am getting well out of my realm here, but, as I am aware, a lot of this has been assisted, has it not, by schemes

adopted by the Attorneys General. One is the so-called fraud squad of the R.C.M.P., which is given authority to do that job, and the other was a repository of securities information, a network - it is ~~all~~ in the criminal realm, I guess, - a network of information between provincial and federal police services.

DEAN LEDERMAN: I should think, as Mr. Venton suggested, there could well be an administrative way around any difficulties that exist here.

DR. FORSEY: Sounds extremely complicated where you are dealing with a matter where you have ten provincial Legislatures with quite possibly different policies on the subject.

What has become of that constitutional conference that you say Johnson was supposed to be requesting when he got cold feet about Prudential and all that? I thought we were on the verge of having an agreed constitutional amendment to transfer the power. It all seems to have gone up in smoke.

THE CHAIRMAN: The thing somehow slipped away. It was Johnson requested Mr. Pearson to call a federal-provincial conference on securities and financial institutions and so on, and it did take place

last spring and a number of study committees were set up under a new federal-provincial committee of civil servants, and a number are under way. Well, the mutual funds study is under way. Another is the trust and loan companies and the closing of certain gaps in legislation, and a study of that is under way. There are various studies that are proceeding, and they are to report back to the federal-provincial conference of Ministers some time early in the new year. There are so many of them I had forgotten about them, until you mentioned it.

DEAN LEDERMAN: The more I look at this particular question, the more it appears to be too complicated to throw into the middle of the Federation of Tomorrow Conference.

THE CHAIRMAN: Is this the general sense that people have? That is really what I want on this.

PROF. BRADY: Yes. It is not general enough really.

THE CHAIRMAN: That is good. It helps to get me off the hook very nicely.

PROF. McWHINNEY: Although Mr. Faribault may raise it. It just happens to be one thing he might know a little bit about.

THE CHAIRMAN: Yes. I don't know

whether he is going to speak or not. We might just take a few minutes break.

--- Short recess.

THE CHAIRMAN: May we come to the sixth session - "The machinery and structure ..." and this is more institutional in its character, I suppose. Are there any comments on this one?

DR. FORSEY: I have two comments to make. One is that I would like to know what 1(b) "Advisory Council to both spheres of government" means. It is not clear to me.

The other is that I shudder at the prospect of 3(b) - "Permanent provincial representatives in Ottawa", because this is just going to be the beginning of separate states. You get your High Commissioners from the provinces in Ottawa, and your evolution from that to ambassadors from the separate provincial states will follow just as the evolution of the High Commissioner in London went on until the High Commissioner was a diplomatic representative of a separate sovereign state.

I don't know who thought up that one. I have heard it before and it just scares the sense out of me.

PROF. FOX: Eugene, hasn't Alberta had somebody at Ottawa, isn't it J. Frawley?

DR. FORSEY: He is a lawyer who has an office there and represents them when cases come up. It is not the same thing. This looks like something far more dignified. "New form of machinery"? Frawley is not a new form of machinery; he has been around there for years. Presumably this is something much more dignified and ceremonial than a mere counsel for the province who holds a sort of watching brief and pops up and writes around and asks people for copies of their speeches, which he did with me the other day.

PROF. FOX: Does he have a formal title?

THE CHAIRMAN: He is legislative counsel to the Executive Council.

PROF. FOX: But he is resident in Ottawa.

MR. POSEN: They listed him as their special counsel in Ottawa.

DR. FORSEY: Anybody can do this, but "permanent provincial representatives in Ottawa" is a new form of machinery and structure, and it seems to me we are envisaging something which is pregnant with most dangerous possibilities if you value the continuation of

this country as one country.

PROF. BRADY: I think, Mr. Chairman, you have enough after all in that session without, say 3(b). It is not a very crucial matter, and I doubt there would be much discussion of it. I think to simplify your agenda you might eliminate it, if we are eliminating anything at this stage. I am not sure.

MR. STEVENSON: Mr. Chairman, I might say this proposal has come up off and on in informal discussions at least over several years. Quebec has opened an office in Ottawa. We have had from Ontario at different times people there representing different aspects of Ontario government relationships with Ottawa, not civil servants so much.

PROF. BRADY: But you would agree this is not really a very crucial question then to confront at this conference?

MR. STEVENSON: No, I think insofar as one discusses new machinery and proposals for different types of machinery, this is one that has come up at a number of times, as a possibility.

DR. FORSEY: Well, it is a time bomb planted in the bodywork of Canada, I will tell you that right now, you mark my words. I have

played Cassandra a few times, and if this is seriously considered I shall play Cassandra again. You are just absolutely playing with the most dangerous form of explosive by putting this in, I mean, by discussing it on the agenda. All right, I suppose somebody will bring it up, but watch it. The Government of Ontario should be very, very careful not to give any kind of colour of support to this, unless it wants to see the whole of Canada go right down the drain.

DEAN LEDERMAN: This refers to something in the nature of diplomatic representation?

DR. FORSEY: It is no use talking about Frawley or somebody having sponsors to go up and stay for the session to watch something for a province. That is a different thing.

THE CHAIRMAN: I suppose there would be no problem about eliminating this, provided no one thought we were eliminating Mr. Frawley. I thought the purpose of it being on the agenda was, as Mr. Stevenson has said, for the sake of completion of the various proposals that have been made in this realm that likely will come up. Are there other points about this?

DR. FORSEY: What about this

Advisory Council? What exactly does that mean? Is it a single Council appointed by the provinces and the Dominion jointly? What kind of composition is envisaged for it? What are its functions, what would its powers be?

THE CHAIRMAN: Who would speak to this one?

MR. VENTON: They are an Advisory Council of resource Ministers, and it has delegates from both provincial and federal governments on it. It is technically an Advisory Council.

DR. FORSEY: It is made up of who?

DEAN LEDERMAN: Resource Ministers of all the provinces.

DR. FORSEY: Is this supposed to be an Advisory Council of Ministers, or is it going to be an Advisory Council of people outside? Is it going to be like this Committee?

MR. VENTON: I believe it is not just resource Ministers; they have Deputy Ministers.

DR. FORSEY: But they would all be official people, is that what it envisages here? A council of Ministers and Deputy Ministers, or a council of outside people? It is not clear to me. It seems to be very vague.

MR. VENTON: To add another thing, I believe there are outside people on this Council also, so it would envisage the whole range of possibilities.

DR. FORSEY: Besides, that other thing is concerned with one particular subject of immense importance. This presumably would be concerned with everything under the sun in the range of Dominion-provincial relationships, and what kind of Advisory Council would you have that would be concerned with all those things, and what advice would it tender to whom, on what, when and why? The whole thing seems to be most nebulous.

DEAN LEDERMAN: If one is to have a free-wheeling Advisory Council, where does that leave the Legislative, administrative ---

DR. FORSEY: Yes, and if it is in fact to be made up of Ministers, how does it differ from an inter-provincial conference or sort of continuation? Do they stand up, turn around and put on another hat? It is all mystifying to me. It may be an excellent idea (I don't know) but I am simply saying that when the delegation goes into this affair, it should be able to offer some explanation of what is in mind, because there may be other people who will be as puzzled by it as I am myself.

THE CHAIRMAN: I think this one is going to need some clarification, is it not?

MR. STEVENSON: Right.

PROF. BRADY: I was wondering if you might not have heard the question which has been raised many times and was indeed recommended by the Rowell-Sirois Commission, that federal-provincial conferences might meet regularly; that indeed it was mandatory to have to meet regularly. It was urged by Angus McDonald on the Commission in quite an extensive paper, and it has been discussed at intervals. Is it worth mentioning that, or is that intended to be included under 1(a): "To systematize the relationships and assist co-operation ...".

MR. STEVENSON: Yes, I think the idea is that this would be under "Systematize" - things like regular rather than ad hoc meetings, is what is meant; and certainly in the theme paper of this subject this question is gone into in some detail.

THE CHAIRMAN: Any other points on this item?

PROF. FOX: Do we know if the provinces are interested in this topic? Is it likely to be a sort of lively session; is there going to be vigorous discussion?

THE CHAIRMAN: It varies a lot.

I think it is fair to say that a lot of the provinces have not given this subject as much discussion or consideration, wouldn't you say, as the broader questions. On the other hand, until the other day when we were at a meeting of officials, there was discussion, and not just whimsical discussion, about the problems of communication. We were talking about when would we get together for another meeting, bearing in mind people coming from extremes of the country. It is already convenient to go to Ottawa in the morning and come back in the evening, but this would be a day lost at each end travelling, and there was discussion of some kind of closed circuit hook-up or communication hook-up for conference purposes that would solve the problem of time spent travelling. This is a machinery item that seemed to me a realm worth considering.

MR. STEVENSON: Another thing that has made this subject topical this year is that the Institute of Inter-governmental Relations at Queen's is doing a major study in these areas for the Tax Structure Committee, essentially on relationships and fiscal and economic questions, but as part of the question Ron Burns has been visiting Premiers and Provincial Treasurers across the country. I thought the mere fact of a visit of this

nature is enough to have got a number of them at least thinking about it if they hadn't before.

THE CHAIRMAN: Well, I would think we might call it a day then, if there are no other comments. We seem to have lost a number of members, and I think we have probably got a number of suggestions there to help us clarify the agenda.

Well then, the order of business will be the Conference on the 27th to 30th and then the next meeting on Friday, December 15th.

--- The meeting adjourned at 4.15 p.m.

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Publications

ONTARIO ADVISORY COMMITTEE ON CONFEDERATION

M E E T I N G

held at

The Frost Building, Queen's Park, Toronto

on

FRIDAY, DECEMBER 15TH, 1967



VERBATIM REPORT OF PROCEEDINGS

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VERBATIM REPORT OF PROCEEDINGS

ONTARIO ADVISORY COMMITTEE ON CONFEDERATION

Meeting held in the Board Room, 6th floor,
The Frost Building, Queen's Park, Toronto,
on Friday, December 15, 1967.

PRESENT:

Mr. I.M. Macdonald (Chairman)

Prof. A. Brady

Prof. D.G. Creighton

Dean R.M. Dillon

Prof. P.W. Fox

Dr. E. Forsey

Dean W.R. Lederman

Mr. C.R. Magone, Q.C.

Rev. Dr. L. Matte

Prof. E. McWhinney

Prof. J. Meisel

Mr. J.H. Perry

Mr. R.N. Seguin

Prof. T.H.B. Symons

Mr. D.W. Stevenson)

) Co-Secretaries

Mr. R.A. Farrell)

Mr. E. Greathed)

)

Mr. C. Beer)

)

Miss J. Côté)

Received by the Committee at this meeting:

Mr. E.W. Callaghan, Q.C. Senior Crown Counsel.

--- At 9.40 a.m.

THE CHAIRMAN: In opening the meeting I would say that Professors Conway and McIvor will not be coming to the meeting today, and Dean Dillon will be along after lunch.

Now, Mr. Stevenson has one or two duties to perform.

MR. STEVENSON: Well, the first announcement is one which seems to be a perennial, or has been at least for the last four meetings. We have one new person in the Secretariat this month, which is Miss Jocelyn Côté behind you, who is a graduate of the University of Ottawa, and was a hostess at the Ontario Pavilion at Expo in the summer. She has been with us last month and helped us out very much in the last minute preparations for the Confederation Conference. She will be working with Charles Beer in the general area of education and cultural questions, and help us out with our monthly translations of the Quebec Press.

FATHER MATTE: The French wing.

MR. STEVENSON: Right. The second announcement is just a short administrative one which some of you may already know. That is to remind you that the mileage allowance is

14 cents a mile, not 10 cents, as some people have been putting in on their claims. I think that claims that came in for 10 cents in the last little while have been adjusted, but this was made some months ago and I don't think we ever really informed you.

PROF. McWHINNEY: How is the figure of 14 arrived at? It seems odd.

MR. STEVENSON: It is supposed to be a calculation of gasoline, oil, depreciation, wear and tear.

FATHER MATTE: You own a Cadillac, don't you?

PROF. McWHINNEY: No.

THE CHAIRMAN: A very scientific point.

DR. FORSEY: Perhaps as Borden said about the right-of-way in the Hudson Bay railway: "Deliberated upon by council and deemed to be a convenient figure."

THE CHAIRMAN: I talked to the Prime Minister early this morning about a number of matters bearing on this Committee and bearing on the future of our work following the Confederation of Tomorrow Conference and in anticipation of the coming Federal-Provincial conference and other matters.

I discovered that his own sense was very much my own sense, that this was a very good time to take a general stock-taking about where we have been and where we are going; to consider what we have done and what we might now do; in another sense, to consider the general approaches that the Government should make and that the Committee should make in association with the Government.

Now, this all involves, I think, considering fairly directly the future role of this Committee which early next month will have completed three years of intensive work. It raises questions about the kind of formal support that is needed for the new Continuing Committee on Confederation of the four Premiers which was established at the Conference, about which I will have a little more to say later. It says something about the work that we should do and must do in what I believe are going to be, in the next few months, very explicit and very direct and very important decisions affecting the character of our federal system.

So that looking back just for a moment, if I may, at the approach that we have taken over three years, it seems to me that there has been a very great change, if I may say so, in the general

understanding and appreciation within the Government of the province of the character and the complexity and subtlety of the situations that exist in the federal system today.

If one looks into the terms of reference which the Committee had three years ago, they were to consider the role and place of Ontario in Confederation, and in those general terms there is no mean task, I think, in interpreting what that implied. I think in a number of realms we have contributed directly and explicitly to government policy and to government administration. I think of the very early work we did on the cultural agreement and, I think more recently, what I personally regard as perhaps one of the most important single acts of government policy since I have been associated with the government, and that was the French language secondary schools question last August. We have achieved whatever fame or notoriety has accrued to the publication of our hard-cover book of papers.

In the course of that time we have built up an establishment or, for want of a better word, a civil service group. When I think back now to the way we had to approach our work here at the official level three years ago, compared with the resources we have now, I sometimes wonder exactly

how we did stagger along at that time in our very early steps.

Now, if all of this sounds like the overtones of a funeral dirge for the Committee, I assure you it is not intended to mean that whatsoever; because I asked the Prime Minister this morning directly what he felt about this; that this was his Committee, it was his idea, and it was his concern and what did he feel about the place to which we had come. The one thing which he feels very strongly is that there is a continuing need, perhaps a fortiori, for a committee of this character; that very often from day to day it is perhaps difficult to measure or to assess the role of an advisory committee of this type, and I don't think it can always be measured on specific or particular acts but rather in a continuing process in which there are many indirect benefits, as the Prime Minister himself has said and as I said with great appreciation, to his own understanding and knowledge and appreciation of the kind of situation in which we now find ourselves.

I must say I was very encouraged indeed and, as a civil servant, very pleased, when on the eve of the Confederation Conference he said that he did feel, as he did not feel three years ago, that he could lay out all on the table, everything that this situation was about, and feel confident in his

understanding of it. I think that is undoubtedly more due to him but in great part due to the Committee.

So, as I have said, I think we have now come to a point where stock-taking is appropriate, and there are certain propositions I would like to put forward.

The Prime Minister asked me to discuss quite frankly and quite directly with the Committee what kind of work was now required, and what kind of approach was now required. As I say, we begin with the proposition that a Committee of this character is important, and perhaps now even more important, because we have passed beyond the stage perhaps of theoretical enquiry into many things. I believe that now in the next few months we are going to have to be in a position to put forward very specific proposals and very specific commentary on proposals emanating from others.

So the two propositions I would like to make are these. First of all, I believe it is the policy of the Government, as expressed by the Prime Minister at the Confederation of Tomorrow Conference, that there will be and must be change in the Canadian federal system. I think that this sentiment came up strongly both in his

opening statement and in his concluding statement, and again, if any of you happened to see that interview the other night on "Twenty Million" or however many there were "Questions" on the Charles Lynch interview.

MR. MAGONE: I listened to it, and I nearly jumped out of my seat.

THE CHAIRMAN: I did too, because I thought that the two Premiers in that situation filled me with some considerable hope for the future of the country.

PROF. McWHINNEY: Mr. Trudeau did not?

DEAN LEDERMAN: Mr. Trudeau did very well too, I think.

THE CHAIRMAN: I think they all did, but apart from that ---

PROF. BRADY: Can you summarize it in a sentence or two?

THE CHAIRMAN: The point I am coming to is this, that Mr. Robarts enlarged upon his views of change that he put, and the theme of change as he put it at the Conference. He said in particular he felt no doubt that quite broad change were necessary in the character of the Supreme Court and in the character of the Senate and in other departments of our federal institutions. The interesting point, I thought, was when he was asked

whether he felt the people of Ontario were fairly satisfied with the present system or not and he said in his judgment perhaps most people in Ontario were quite satisfied with the status quo, but his belief was, knowing a large part of the country were not satisfied with a number of things in the present system, that was sufficient reason for him to be interested in helping to do something about it. I think that is his philosophy.

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So I think that such a committee in the future would need to accept that proposition, those who wish to work at it, and to advance that proposition if one is really going to help him to do the things that he wants to do.

The second proposition is concerned with the organization of such a committee. Here I have gathered from a number of you in private conversations, that the type of general meetings we have here, which are always interesting and always lively, nonetheless have tended in recent months to cover the same ground in quite a repetitive manner; and that perhaps our time, and I am thinking here in terms of the time and efficiency of members of such committee -- our time and efficiency would be much better spent if we had fewer of these general meetings, and perhaps three or four a year or at the most every

second month; but that we use the experience and the advice of members of the Committee to work with our officials in small groups or small task forces as they direct themselves to particular questions and to particular problems that the Government must now meet and for which advice is necessary. In this way I would think that a much more direct type of advice and participation could be found in a more efficient manner for the Committee.

Also I think some of the concern that Professor Forsey felt, for example, about the background papers, that this could be met by a closely working relationship of the advisers to the officials for particular purposes, rather than having to spread one's time more broadly in a more general way.

I say all of this because in the next few months, and indeed in the next few weeks prior to February 5th, we are going to have to move into very specific positions and come forward with particular policies on all of these questions of the institutions which I believe are now open for discussion.

These then are some general remarks that I would put on the future of the Committee and I have put them in terms of proposals or propositions

as a starting point to this discussion; for out of this meeting I have been asked to come back to the Prime Minister with some recommendations on the future character and work of the Committee, after exploring it in a full and frank manner with the members of the Committee this morning.

PROF. McWHINNEY: Did you see the Prime Minister, Mr. Chairman, after the not recent announcement in Ottawa? I am wondering if there has been any chance to assess at the official level the implications of the sort of leadership interregnum in Ottawa. Is it going to affect the timetable of this meeting?

FATHER MATTE: Could be.

THE CHAIRMAN: I don't think so, no.

DEAN LEDERMAN: Mr. Pearson himself spoke very explicitly on this point. He intends to give what leadership he can to the conference.

PROF. BRADY: Particularly, he said, the conference ---

DEAN LEDERMAN: In February.

THE CHAIRMAN: He is Prime Minister to that day when there will be a new Prime Minister, and the work of the country must go on. I think in particular in terms of the momentum that has been built up, there can be no holding back from the events that will be initiated in February. This has gone

too far.

DEAN LEDERMAN: My own guess would be that the February conference will now be more a discussion than a decision-making conference; because though Mr. Pearson is still Prime Minister, his power to make long range commitments is certainly down as far as he is concerned, down considerably.

THE CHAIRMAN: It isn't. I mean, he is Prime Minister, he has a responsibility which just cannot be put into mothballs.

DEAN LEDERMAN: Yes, but I am thinking in terms of the willingness of the other people to bargain with him and reach conclusions with him.

PROF. McWHINNEY: You get, I suppose, his own personal philosophy, B and B notion of committee studying problems, making use of time, even the choice of particular people like Trudeau. If you get Paul Martin in, you get a rather different, from what one understands by the discussion, personalized approach.

I am inclined to agree with Bill that the great prestige is there, but can you carry through, or do people expect you to carry through? Wasn't this part of the experience with the Housing Conference? Mr. Bennett is reported as saying it was a complete fiasco and waste of time. Mr. Robarts had more moderate press reports that

came to Montreal.

THE CHAIRMAN: Well, I don't think the situation is comparable there, because in that case you had the very unfortunate, perhaps inevitable situation, of the Federal Government trying very hard to find a role in an area of provincial jurisdiction which just wasn't there. So when you were finished ---

MR. PERRY: Without being given roles, they usually buy their way in.

THE CHAIRMAN: That is right.

PROF. McWHINNEY: This is tied in again to (1) economic policy as a particular subject and (2) perhaps judgment of doubtful position to get into housing.

THE CHAIRMAN: I have under item 2 on the agenda the role of the Continuing Committee on Confederation, on which there are some things to report to you; also the position of Ontario at the forthcoming Federal-Provincial conference. If I may, I would like to leave the discussion of this point to that item, and stick to the question of the work and future of the Advisory Committee in this item.

MR. PERRY: I wonder if you could just tell us a little bit more about what your staff facilities represent. I think this will be

relevant to what you might expect from the Advisory Committee.

THE CHAIRMAN: Well, would you like to describe the Secretariat?

MR. STEVENSON: I think the Secretariat has now reached its full complement. I do not expect it to expand any further. The way it is operated or is operating now is that Ed Greathed is handling its day-to-day activities, and essentially it can be said to operate in three general areas, one in the educational-cultural area. He is also handling this general review of developments in Quebec and the French language press, with Charles Beer, Jocelyn Cote and Colleen Malone. I would expect that this group would have considerable to do in the government follow-up of the B and B report, although obviously this has to be in co-operation with the departments with more direct concern.

The second area is in the whole constitutional-political area, where Ed himself, together with Gary Posen and Bob Metcalf whom you met last month (both political scientists) will be working, I think, to the exclusion of other subjects in the next while.

The third area, the area of general co-ordination of federal-provincial operations in the government, the business of machinery and some of

the more general economic questions, we have Peter Venton and to some extent Andrew Murray at the present time.

In addition, on any matters affecting federal-provincial financial relationships, we use the staff of the department concerned with more general internal financial questions. We have considerable backing there when a particular question of federal-provincial financial significance arises; but it is those seven, three in the first area and two in each of the second, who are working full time on the federal-provincial matters in the Secretariat, and they would form the bulk of the Secretariat work.

DEAN LEDERMAN: What was the second again?

MR. STEVENSON: The second was where Ed and Gary Posen and Bob Metcalf are working, which is generally constitutional-political problems, the kind that will come up under Bill of Rights.

DR. FORSEY: And one of those is a lawyer?

MR. STEVENSON: No, this is something I should mention. We hope this morning when we get to the item on the Federal-Provincial conference, to have the senior Crown Counsel for Ontario, Mr. Frank Callaghan over. He is on call.

DR. FORSEY: Am I right, this document, these background papers, did you get any lawyer to

read that before that was given to the press?

MR. STEVENSON: These were - I guess no lawyer read them before.

DR. FORSEY: Some lawyer should. They contain six pieces of gross constitutional illeteracy. Disgraceful that this kind of thing should be given to the world from the Ontario Government. I have mentioned this in my memorandum and I have counted them and marked them, and there are six of them. It is outrageous. It just confirms what Mr. Trudeau said the other day that a great many of the critics of the British North America Act haven't read it.

What could be more absurd than to say that one proposal that might be considered is to increase the taxing powers of the central authority? God himself cannot increase something that says "the raising of money by any mode or system of taxation" -- for heaven's sake get some lawyer in there who can read the Act and understand it.

MR. STEVENSON: We certainly hope to work closely with the Attorney General's department over the course of the next few months.

PROF. McWHINNEY: May I put it this way, not in any reference to what Eugene gives, but I think in the area of public law the gap between political scientists and lawyers is not as great

as all that. In some respects one has great admiration for Mr. Callaghan, but I almost suspect that your political scientists here in the public law area would hold their own in discussions.

I am not, in other words, as worried by the lack of a lawyer if you have got a political scientist trained in public law. Many of the lawyers, of course, are not public lawyers, and it is awfully hard to get a good constitutional lawyer of the sort you have been able to recruit in economics and other cultural areas.

DR. FORSEY: But it might be possible to get somebody who can read the British North America Act and understand what is in it.

PROF. McWHINNEY: It might help even if some of the law professors would read the British North America Act.

MR. PERRY: In other words that is about the size of the staff, more or less the general shape of things for the future.

PROF. MEISEL: I was wondering whether we should not look at the role of the Committee in the sort of broad context in which a political scientist might look at it. It seems to me that this kind of Committee is an extremely useful mechanism because it provides a means for communication between the Government and governed,

which is not always provided by the presence on the one hand of the political party and on the other hand by a bureaucracy. I think that more and more on various levels of government it is precisely this consultative machinery that is neither partisan, political nor bureaucratic, which is necessary in the naturally tremendous amount of specializing required and also the means of communication are very often distorted by all sorts of rigidities and mass media.

It seems to me that what we ought to aim at is this, that now that we have clearly an excellent bureaucracy in this department, it seems to me that what is needed is that the Premier and the Secretariat have access whenever they think they need it, to the kind of advice that they feel that they should draw on when they are working on specific problems; on the other hand that the members of this Committee who, I think, should continue existing as a Committee, should feel perfectly free from time to time to make recommendations when they, quite independently of the government or bureaucracy, think that certain things are being done that should not be done or that certain things are being neglected.

Therefore I would like to see the Committee continue and meet now and then in the plenary

sessions, so that we do not sort of relax too much, and so that we are goaded into acting as a group on occasion; but in addition to this I think probably what the Committee should do is break up into committees which would roughly correspond to the three divisions that Don Stevenson outlined, and undertake certain chores. The sub-committees should undertake certain chores from time to time in conjunction with these three divisions of the Secretariat.

THE CHAIRMAN: Father Matte.

FATHER MATTE: Mr. Chairman, as suggested in the last letter, I did my homework, and would like to present a part of my thinking at least.

As yourself, I noticed in the preliminary remarks of Premier Robarts, that he was sure of one thing - that we were out for changes. Things have changed, things are changing, and things will change.

We now know from Mr. Johnson's preliminary report what it is Quebec wants. This we know quite definitely in writing. We do know also from the B and B Commission report what are the ways maybe of meeting to a certain extent the views of the French Canadians in Canada.

So the ways are indicated that, in my thinking, something concrete, something spectacular, I would say, should be done so as to "defuse" the

excitement of the separatists in Quebec.

Things are changing in Quebec very, very fast. I am told that some 80 per cent of students of high schools, colleges and universities are for separatism. Teachers, in the same proportion in higher schools, colleges and universities are 80 per cent in favour of separatism. I know that these people are what we call "white collars" and in the field of economic problems do not matter. On the other hand we know that Mr. Levesque has become a first-class star, I am afraid, and he is attracting not only "white collars" but even the "blue collars" lately we see. He has attracted a lot of workers. So the situation is quite something in Quebec, and I think we have to watch that. Mr. Kierans has lost a lot of prestige in Quebec since his breach with Levesque. In my estimation also, Mr. Lesage is out of the picture and is on the sidelines forever.

We know also the recommendations of the Estates General. For myself, I was quite ready to despise them and to say that the Estates General were "packed". I am afraid I have to correct that now, and admit that on the contrary the Estates General is a manifestation of a real landslide in Quebec in favour of separatism.

Things are changing fast.

Last night I was reading the Toronto Star,

and I just discovered that Ontario N.D.P. members said, first of all the caucus has endorsed the major recommendations of the B and B Commission; second, they have decided to take French lessons; thirdly the N.D.P. feels that initial steps should be taken for introduction of simultaneous translation in the Legislature. Things are going fast.

Yesterday, after I dictated this short memo, I learned last night that two Ministers, Mr. Masse and Mr. Proulx may quit the Johnson Cabinet. We knew that they both were separatists at heart.

In the Toronto Star last night it is also mentioned that two M.P.s, Mr. Bousquet and Mr. Flamand, are planning to leave the Union Nationale. If this happens - and it could happen in 24 hours - in six months time Mr. Johnson is just out of the picture, he is just out of the government. I do imagine that we have to do something and most urgently.

I imagine those who attended the Confederation of Tomorrow Conference are convinced that Mr. Johnson is a federalist. He told us that he is a Canadian, that he wanted to stay a Canadian; but I think we also have to come to what was said by Mr. Robichaud that it is up to Anglo-Canadians to help Johnson. Johnson himself cannot stop

separatism, as he told us quite bluntly.

So to my mind our country is divided, and tension in Quebec is increasing. Something has to be done, and very fast. I would say, to start with, at least to endorse the recommendations of the B and B Commission. That is part of my thinking.

I would just wonder what Professor McWhinney, who is a Quebecker now much more than I am, feels about separatism in Quebec and the reactions in the last two or three weeks.

PROF. McWHINNEY: I would agree with you on Premier Johnson. I was tremendously impressed with his performance here, I think everybody has been. It was the Quebec journalists there told me what was a very obvious fact, that there were two schools within his delegation, and he was able, as you know, to keep them under complete control.

I since have letters from both Tremblay and Faribeu discussing a speech I made in Quebec, and it was just by way of saying that they thought the Confederation of Tomorrow Conference was very valuable, both of them; but under the surface one gets the feeling you are just mentioning, the suggestion that Johnson is riding two horses and it is going to be very hard to continue riding the two together much longer.

I would agree with you again on Rene Levesque.

He has a charismata that nobody else in Quebec, or perhaps in the country, seems to have.

You are perfectly right in talking about the "white collar" type, and if you go through the universities of Montreal, in the secondary schools, the separatist feeling is very strong.

I think the one big asset is Mr. Johnson at the moment. I would agree with you about the plummeting down of Lesage though. There have been statements in all Quebec papers about Mr. Lesage's going, and I think they have already named potential successors. The Liberal party seems to be rocking around; they are not going anywhere. It is really up to Mr. Johnson.

If your point is the urgency of the sort of action Mr. Robarts has been taking here, I think it is very aptly confirmed.

DEAN LEDERMAN: Mr. Chairman, what Father Matte has told us and what Professor McWhinney has told us does emphasize, I think, the urgency of getting this Committee into a proper posture to see what we can do. I think obviously if Mr. Robarts thinks we have a continuing usefulness, then we should try to continue it as usefully as we can.

One thing I would like to question though, is the continuance of our division into the sub-committees that have existed up to this point.

I notice that we are scheduled a little later to go into sub-committees and think of new research projects. I cannot think of any new ones qua research projects. I think we have covered the ground pretty thoroughly as far as simply commissioning papers and writing papers is concerned.

I think what confronts us is something more integrative than we have attempted so far, and, to be blunt about it, I do not think the lawyers should sit in separate conclave from the political scientists and the economists as much as we have been doing in the past. I think somehow we have to do some integration, more integration. This is no criticism of what we have done as committees, which I think has been useful up to this point, but now we have to pull things together in a way we have not done hitherto, and I do not see that we can do it if we continue to hive off into the old sub-committees.

MR. SEGUIN. I agree with Father Matte that Quebec is moving very fast. In fact this week I met five different lawyers from Quebec (not from Hull) and three are separatists. They said they have nothing to gain from remaining, and they are going to take their chance otherwise.

Now, I would suggest if we could detail what we have been talking about in generalities for three years, we have heard from you, Mr. Chairman,

that the Prime Minister is in agreement with amending certain things such as the Senate and Supreme Court and other things, and we must prepare more papers.

I know that Quebec have a constitution, that the three parties in Quebec have a constitution prepared and it is on paper. I know Mr. Johnson did not bring it out last time, but I know they have it; and I know Levesque has one and I know Lesage has one. I know also that they have their own set-up for the Supreme Court and for the Senate, for which we have nothing here in Ontario. Speaking of making amendments is all very well, but how do we understand those amendments? How do we comprehend them? I think it is time we put something down on paper that is detailed enough for the Prime Minister to use at any time when it is useful for him to use it.

DR. FORSEY: I couldn't agree more with this. However, I must take issue, as far as I am concerned, with the statement that Father Matte made, that we now know from Mr. Johnson's preliminary statement at the Confederation of Tomorrow Conference what Quebec wants. I don't think we have advanced one inch on the thing. Eight specific questions that Mr. Campbell asked were simply not answered.

When it comes to being impressed by Mr. Johnson's performance, yes, I was impressed by the cold efficiency of it. He is obviously a first-class performer, but I was also profoundly

unimpressed, as I say, by his candour. I have heard him described by somebody in Quebec, a French-Canadian who watches things pretty closely, as a devious and dangerous man. I think he is a devious and dangerous man.

I think you have noticed his remarks on Radio Luxemburg and his remarks after he got from Montreal at a big press conference, where he said (I am sorry I haven't the quotation here) that he differed with the sovereignists and independentists only on means; that he wanted a sovereign state with an economic union with the rest of Canada.

I suppose you also noticed the remark: "We have no territorial ambitions". You will recall perhaps, the last person who used that expression and the sequel that followed. I have a friend who was in Germany at the time Hitler was boasting as Reich Fuhrer and Reich Chancellor, and he said: "When I heard that remark --" (and I might add he is a person very familiar and sympathetic with French Canada) "-- my blood ran cold", because he remembered exactly the last circumstances in which he had heard it.

I have some reason to believe also, in fact I have excellent reason to believe, that the people in Newfoundland are exceedingly uneasy about the prospect of what may happen with regard to Labrador and the possible issue with Quebec there;

and some influential Newfoundlanders are saying that if Quebec secedes, Newfoundland will have to immediately join the United States to defend the Labrador frontier.

I think some of these things have got to be taken into pretty serious consideration, and we have to get down to brass tacks,

It is easy to talk in wide terms about the necessity of Quebec having all the powers that she needs for her full development, and this kind of thing; that is fine, but what are they? If you are going to write a constitution, if you are going to make amendments, you can't simply say that Quebec is entitled to all the powers she wants to have to develop her personality.

Are you going to put in, for example, this crack-brained suggestion in the background papers that there should be concurrent jurisdiction over international relations - quite unqualified, quite unexplained? Does this mean, for example, that in matters of war, Canada could be at war while Quebec was resting, or vice versa? What kind of gibberish is this?

Surely we have got to get down to something specific, and if you are going to talk about specific powers in international relations with provinces, you had better say exactly what you think, and not just put in some fluff and soft soap or soothing

syrup.

I couldn't agree more strongly with what Mr. Seguin says. We have got to get down to brass tacks. Otherwise we are going to be caught.

MR. SEGUIN: You will be caught.

DR. FORSEY: With their precise proposals, and we will be left rubbing our noses or watching other people's ears flap, not knowing what in the world to do; and the job of working out these proposals should be done by somebody else than the people who perpetrated these background papers. I use strong language, but every time I re-read this document I get more disgusted, more alarmed, not only by the howlers but also by the extraordinarily tendentious and question-begging tendency of the whole thing.

PROF. BRADY: Mr. Chairman, I think it is time for us to get back to the agenda and to the subject that was opened, namely, what changes are necessary in the operation of the Advisory Committee to make it more effective to do the tasks that the Premier hopes that it will do, and that those of us who sit on it hope that it will do. There is not much point in being on it, as a matter of fact, unless it does the job effectively.

I agree with Dean Lederman in his remarks about the committees. I think the integration of

the discussion of these problems is necessary, and some arrangement of this kind, devising the committees, I think, should be one part of amending the procedure.

THE CHAIRMAN: Well, the point that arises throughout many of these discussions revolves about the nature of an adviser, I think. This is an advisory committee. Now, there are two senses in which a government needs advice. Presumably there are more, but in this context two senses. There is technical, expert advice. One wants to avoid, as Eugene has put it, howlers in points of pure technical and functional accuracy. There is also the question of advice in terms of what I call stance, and here I do not mean the politicians' politics at the final stage of having to live and to survive and function in a political world, but I mean the development of attitudes, as it were, or of approaches or even of strategy. I think both of these things are called for here, and both of these things have been forthcoming and have been helpful.

I do feel myself that the present sub-committee structure is not very appropriate to what we must now do.

I think what we must now do is this, as this conversation has suggested, is simply catalogue the particular items for which we must develop policies. What will the policy of the Ontario

Government be when it comes to considering the question of the provinces and international affairs? What will it be in the Supreme Court, in the Senate; what will it be in the amending procedure? What will it be on the Bill of Rights - on all of these specific questions that are going to come to us?

In dealing with those, I think we have got to have study groups or task forces or committees, whatever it may be, of members of this Committee and members of the Secretariat; and we will deal with those specific problems, and we will help the Government to formulate a position.

I think that they should not just be cast, for the two reasons I mentioned, as expert committees. I think they should be a cross-group, in which you will have the assurance of not only technical advice but also of the thoughtful quality which every one of this Committee can bring to it, and that is the sense of small people, political advice used as I describe it. This is the point I feel we are at.

The other question that we should consider, I think, at some point, is that this is an open-ended committee; its terms of reference are set up without any breaking point and the committee goes on. I know the Prime Minister does not wish any member to feel that he has somehow, by going on the Committee, committed himself to a life sentence, so to speak, and no one must feel that he has got

some obligation to go on and on if his time or his interests have changed in any way in the task.

PROF. FOX: It seems to me, Mr. Chairman, that what you said is valid, but I think there is some justification in retaining at least in structure the existence of the sub-committees, because some of the original purposes for which they were created remain. For instance, in reference to the cultural sub-committee, there is still this continuing problem of supervision of the cultural exchange, and there might well be scope for consultation by that committee with a new committee that is appointed to examine and recommend on the introduction of secondary school bilingual education. It seems to me we could do both, in other words, without abolishing the sub-committees which might have a use from time to time - perhaps your economic sub-committee would have a use to you - on specific matters; that while those committees do not have to meet in any routine fashion regularly or go on with an existence of that sort, that it would not be wise to abolish them completely in order to shift the emphasis of the Committee to specific projects.

So that I would suggest that they might remain, and where there is a function for them to perform they might perform it.

If we meet later today, as you have

suggested, on the change in sub-committee, we might each of us in our sub-committees look at what we have to do and see whether there are functions to perform there in the immediate future. Then we might go on at the same time to consider forces, something out of another arrangement of members of the Committee in task forces or whatever, on specific projects that have now arisen in the present context; but I would like to recommend that we continue at least on paper the existence of the sub-committees.

DR. FORSEY: I think the essential point as far as continuing the existence of this Committee is concerned, is whether we are going to have a chance to look at documents issued in the name of the Ontario Government before they go out. If we are not, we are wasting our time and the province's money, and all our suggestions, if we make any, can be put in the waste paper basket. If we are not going to have a chance to see things that are prepared, for example, by the Secretariat before they are issued to the press, for example, then what in the world is the use of our even bothering to read them ex post facto, except to admire or otherwise?

PROF. McWHINNEY: I know you are referring to the particular matter of the position papers.
Eugene ---

THE CHAIRMAN: Theme papers, please.

There are no positions represented either on behalf of the Government or ourselves.

PROF. McWHINNEY: I meant position papers in the Foreign Office sense of varying positions, policy options, if you wish.

THE CHAIRMAN: I see.

PROF. McWHINNEY: Without making a commitment. But I don't think, Eugene, you would be suggesting that in a general sense, as I think your last remarks implied, that a general policy statement by the Government, say, on the capital or on foreign affairs would have to be submitted to the Committee in advance. That would be going well beyond our function of being advisers; it would be active policy-making.

DR. FORSEY: They don't need to consult us about anything, of course not; but if we are going to advise on constitutional matters, changes in the constitution and this kind of thing, then we may as well be asked to take a look at the things. If we are not going to look at them, they can go ahead and blind their eyes and tie their hands and do anything else they want, consult images of the past if they want to or consult nobody; but if we are here to advise, surely we ought at least to see something on this question that we were appointed to advise on. Otherwise, as far as I am concerned, I would prefer to stay home and save

my breath and cool my porridge and shed my tears over the way events are moving.

6 PROF. McWHINNEY: There is undoubtedly a very vital, what I would call, advisory function in taking the situation of the so-called foreign affairs power, in establishing what the position is in particular federal systems and how the role developed and what responsibility for what conditions developed; and also a role for establishing the implications in political institutional terms of adopting one or other position.

 In other words, you take the political decision-maker up to the point of final decision by exploring the implications of the particular choices, but you do not get to the position of necessarily making a recommendation as to which choice he should adopt. I would be quite willing myself to stop short of a recommendation as to which among the choices he should make. I think that is his function as political decision-maker.

 An adviser, it seems to me, perfectly properly limits himself to stating the past experience in response to what demands have developed, and what are the implications of alternative steps in the future beyond the existing machinery. I think that would continue to be a useful and necessary function of any

advisory group working with the Premier. Is that close to his own conception, Mr. Chairman?

THE CHAIRMAN: Well, yes, but in addition I feel Eugene's point is well taken here, that this is precisely the matter where expert advice can best be utilized. It can be utilized in various ways, but when one is producing technical papers and technical work or whatever, I think the point is well taken; and this in fact is what I was suggesting in these task forces, that the Committee, if anything, rather than spending its time in these generalized discussions exclusively, could spend more time working directly with our staff and thereby giving them the benefit of their experience and professional advice. I think this would give us a better performance and a better output in our technical work. I think that is quite proper.

PROF. McWHINNEY: A particular, concrete recommendation, say on the Supreme Court, foreign affairs or tax power.

THE CHAIRMAN: This is different in the sense that presumably the work we do in the civil service and with the assistance of the technical advice of the Committee, is to bring forward to the Government in the normal way a set of alternative policy positions on any items, such as the Supreme Court, in which they are properly documented both in terms of what the historical reasons were, what

the constitutional reasons were, what the political implications have been, and all the rest. Then at some point the Government will accept a certain position, which might or might not conform with what any individual member of the Committee would by personal preference choose to have. I think we have to professionalize a bit more in that style right now and do it quickly.

PROF. BRADY: A very apt subject, it seems to me, for investigation by the Committee or sub-committee or task forces, or what you will, is an analysis of the report of the Royal Commission on Bilingualism and Biculturalism, and what its implications are for Ontario.

THE CHAIRMAN: Absolutely. As a matter of fact, I think perhaps even later today or in the next few days, Mr. Robarts may make a statement in which he will be saying just that, that he will be asking his officials and his outside advisers to organize themselves to examine these recommendations in the full compass of the province of Ontario.

Incidentally, Paul, you reminded me of one item I wanted to report on as a matter of interest to the Committee, that we were asked if we would second Charles Beer for a portion of his time to be secretary of the internal implementation committee that is working on the French secondary schools, and

which is to report by next March 15th. So Charles is working with that group.

PROF. MEISEL: Will this be full time for a while?

THE CHAIRMAN: No, for part time, part of his time. Cliff, I think you have been revving up for a minute or two to say something.

MR. MAGONE: Yes, I was, Mr. Chairman. I wanted to say that the constitutional committee has prepared papers on the Supreme Court, and I was under the impression that it had been passed by the whole Committee, the recommendations coming from the whole Committee, that the committee's recommendation was that there should be no change in the constitution of the Court itself; and that the suggestion made by the Province of Quebec that there should be an equal number of civil lawyers and common law lawyers on the Court was ruled out when discussed by the Committee.

There also have been papers on the Fulton-Favreau formula and the Bill of Rights (Bill Lederman has written a couple of papers on the Bill of Rights) and it seems to me that when we start talking about changes of the constitution, we are getting backside foremost before we conclude how the amendments are going to be implemented.

In other words, the formula for amending the constitution in Canada is of the foremost

importance, before we start talking about amending the constitution itself. The only stumbling block so far has been the Province of Quebec, as everybody knows, and they have been the stumbling block right through all the conferences that have occurred, with the help on one occasion, I remember, of the Province of Saskatchewan.

Now, insofar as a Bill of Rights is concerned and either embalming it in the constitution (which I think is the proper term) although people that make the suggestion, I think, use the word "enshrined": before making that suggestion they should do a little thinking about what the consequences of placing a Bill of Rights in the constitution would be. We have a prime example of what happened from the United States, where very little power is now left in the state government by reason of the interpretation of the courts of the constitution. That conceivably could happen in Canada, unless great care were taken in providing that nothing in the Bill of Rights should interfere with the division of legislative powers between the provinces and the Parliament of Canada.

One of the things that I remember from the remarks of Mr. Johnson at the Conference that stands out in my mind, is that he suggested that the other provinces should approach the aspirations of the Province of Quebec as an act of faith, and I

recollected at the time that that was the expression that was used in the Spanish Inquisition before they proceeded to torture their victims.

It seems to me that a real effort should be made, first, to get a formula for bringing the constitution home, and that that particular matter should be put very forcefully to the Province of Quebec, because they are the present stand-out.

DR. FORSEY: I think somebody ought to re-read this speech of Mr. Smallwood at the Confederation of Tomorrow Conference. I got the document the other day, and I re-read it very carefully and marked, learned and inwardly digested the emphasis that he lays on the necessity of deciding what kind of Canada the new constitution or the amended constitution is going to reflect. If it is going to be a Canada in which there is sovereignty for one province and economic union, well, then, my guess is that most of Canada will say "to blazes with you". If we are going to have nine co-equal entities, as Mr. Smallwood said, and one of something else, an entity of some sort, sui generis, and the Parliament of Canada is an also-ran (to use his picturesque but accurate phrase) then it seems to me that we might as well say: "Well, the jig is up, let us go our separate ways".

DEAN LEDERMAN: Mr. Chairman, with the

greatest respect to my colleague Dr. Forsey, I am not as pessimistic, and this perhaps could easily be because I do not know as much about the situation; but I think if any of you had the chance to read the paper that Professor Watts submitted on Second Chambers (and I didn't get to read it until last night on the train) there is an example of the sort of re-thinking we have to attempt, I think.

He has come up with a very specific specification of the sorts of options existing about the Senate.

It is true that we took a vote on the Supreme Court two years ago and, as Father Matte has told us, things have moved swiftly in these two years, but I would prefer to see the Supreme Court stay as it is. One can engage in quite a bit of reform and change in the structure of the Supreme Court and still maintain the essential character of the institution as a superior court. The task is to define what those essentials are and to stand on those points but not to stand on others where changes can be made. This is the shape of our hope and our task both, I would think.

If you want to see a very fine example of how options can be spelled out and backed up with research and so on, I think we have waited a long time for Professor Watts' paper but my impression

last night after I had finished it was that it was worth waiting for, and the waiting was so that he could do as careful a job as he did do when one eventually sees it.

I do not think we can stand on the old position about the Supreme Court. I am as concerned as anyone for our English inheritance and, like Eugene, I think the point would come, if concession after concession were asked for, the point would come where these concessions had accumulated to the stage that I would be inclined to say: "Well, perhaps we had better have a separation and see what we can do by negotiations in the realm of international affairs". That point may come. I am not prepared to state that I have been pushed to that point yet, or that we stop trying to find viable alternatives.

PROF. BRADY: On the Supreme Court, incidentally, I gather Carl Goldenberg and his group has been doing a good deal of work. We don't know what proposals are going to come out of it, but apparently they will come out with some proposals at the February meeting, which makes it all the more imperative, it seems to me, for us to have another look at the Supreme Court and some of the current discussion about it that all of us have either listened to or read about in the last year or two.

I think Dean Lederman is right that all of

these institutions are under review - the Supreme Court, Senate and other elements in our constitution, and we must keep almost perpetually reviewing our position, considering proposals that are being made now, assessing them and making sure that actually we are prepared to stand on the position that we were very confident about a year or two ago.

In the kind of discussion on the constitution that will take place in 1968, we would be immensely handicapped and Ontario would be immensely handicapped if it took a rigid position at the outset, a position from which it was determined not to move an inch. In other words, no fruitful discussion really could be carried on by it with other members of the federation, and certainly it could not give any very helpful initiative in the discussions with Quebec as well as the other provinces.

THE CHAIRMAN: I was struck by a phrase that Dean Lederman used, "the English inheritance". I suppose the problem is to reconcile the English inheritance with the Canadian future. Presumably a hundred years ago a certain system was designed under those existing political circumstances, and I presume we are always at any time faced with the same question of political reconciliation. However, there are two specific points that came out here which I think are very interesting in discussing the role of this Committee. Here are

two specific questions one could ask. It is quite true this Committee put forward a unanimous recommendation on the Supreme Court. It is also true that the Prime Minister obviously does not agree with it. Now, what are the alternatives?

PROF. CREIGHTON: Prime Minister of Ontario ---

THE CHAIRMAN: Yes.

PROF. CREIGHTON: Or this country.

MR. MAGONE: Ontario - the speech on Wednesday night.

THE CHAIRMAN: Either to ask the Committee if they want to examine the question again, or to say: "Well, he will have to keep his own counsel on the matter".

The question of the Bill of Rights will come up at the conference on February 5th. Mr. Robarts says there are three alternatives here. You can do nothing further and leave things as they are. You can put it into statute. You can put it into the constitution. What is it going to be? Is the position open on any of these alternatives?. What position should he take and why? These are two very specific items which he must deal with in the next few weeks. What should the role of the Committee be in serving on those points, for example?

PROF. McWHINNEY: By the way, are you

expecting the Court to come up in February?

THE CHAIRMAN: I think it may well, yes.

PROF. McWHINNEY: I saw Carl Goldenberg briefly a week ago and he was talking about the Court. It is expected to appear on the agenda?

THE CHAIRMAN: I think Quebec will put it on the agenda.

PROF. McWHINNEY: But not Federal Government initiative, that is correct.

THE CHAIRMAN: They could, I don't know.

PROF. BRADY: Mr. Trudeau had referred to the Supreme Court in a speech not very long ago.

DEAN LEDERMAN: With that theme anything could come up.

PROF. BRADY: Which suggested at least it was under consideration by him and his colleagues. There is nothing definite about it.

Incidentally, Mr. Chairman, reference has been made to these remarks of Mr. Robarts the other night. I am one of those 19th Century people who do not follow TV and so on. Is this a speech that one can obtain?

PROF. CREIGHTON: I wish you would tell us the details of it.

THE CHAIRMAN: As a matter of fact he was asking this morning how it came out. He didn't see it himself.

MR. STEVENSON: Mr. Chairman, we have asked

for a transcript of the remarks. We were all quite surprised by some of the things that had come out in it, but we will get the transcript shortly, I hope, and send it around to all members.

DEAN LEDERMAN: I heard from one of my boys who called me not quite fast enough to hear Mr. Johnson, but quickly enough to hear Mr. Robarts, and he didn't say anything beyond the very general proposition that he thought there would have to be changes made in the constitution both of the Supreme Court and the Senate. He did not get any more particular than that; he did not specify what he thought the changes ought to be.

MR. MAGONE: He said a little more than that. He mentioned the dissatisfaction of the people in Quebec in relation to not enough civil lawyers on the Court.

DEAN LEDERMAN: That more or less reassured me about what he was saying, because he was not thinking in terms of constitutional decisions.

MR. MAGONE: He was thinking in terms of the Civil Code decisions.

THE CHAIRMAN: Sure.

DEAN LEDERMAN: It is quite true he did say that, you are right, but that could mean no more than the point that when Civil Code appeals are up there ought to be a majority of civil trained

lawyers.

MR. SEGUIN: There is a majority now. That is not what Quebec wants. Quebec wants the whole bench, and I agree with that. I don't agree with two Courts, as I said before, but that there should be a whole bench - two whole benches; that Quebec lawyers could sit on the others if they wanted, of the English-speaking, but there should be sixteen - ten and six.

THE CHAIRMAN: There is one other thing he did say that I would like to underline in a general way, and that was this. It comes back to this question of change. He was asked why was he interested in these matters, and he said, his words were that he did not feel it was proper to let the future of the country be decided by default as far as he was concerned, and that these were all questions of political negotiation. I think that is what we are engaged upon here: what advice can we offer to help him in the process of political negotiation?

DEAN LEDERMAN: He said once again what he said before, as I recall it, that Ontario as Ontario does not need change and is not interested in it for that reason, but then he went on to say: "We realize, if we are going to hold the country together, there must be change, and we have to concern ourselves with it for that reason".

DR. FORSEY: Then all I hope is that in all

these proceedings the idea of flexibility will not be directed into some sort of dogma. It somewhat strikes me that people who are keen on flexibility model their comment on that of the jellyfish, and it still seems to me.

I disagree with what Bill Lederman said about English heritage. It is not that question; it is a question of viable constitutional arrangements, and things that will work out. I don't care whether they are English, French, Hottentot or Eskimo, but you have to look at these things to see whether they will work.

The other thing is I hope people will not confuse what are described as concessions (although I don't much like the word) to French Canada, proper treatment of French Canada and of French Canadians, with the aggrandisement of the Legislature and government of the Province of Quebec, which are not the same thing to my mind. Indeed, if you go far enough in aggrandizing the Legislature and government of the Province of Quebec, as the Minister of Justice has pointed out and so have I in my lesser capacity, you will in fact be probably injuring the interests of French Canada. The two policies are not the same; they are rather contradictory policies to a very considerable extent.

DEAN LEDERMAN: Mr. Chairman, just a point of clarification. I did not mean to suggest

that inheritance from the past is too much my concern. I am interested in using what is still valid from the past in moving into the future. What we need is new integration. If we can draw on non-English experience to help us with the new integration, or if we can invent something new without being able to say where it came from -- Cliff's proposal is that we perhaps look at the West German Bundesrat for a second chamber.

THE CHAIRMAN: My proposal is we take a two minute break now to help our scribe and stretch our legs.

--- Short recess.

DR. FORSEY: Mr. Chairman, I have one supplementary observation I want to make, that when I heard about how things are moving fast in Quebec I am inclined to say (and I am being brutally frank especially as it may be my last appearance in this Committee) I am inclined to say that the fact that more and more people in Quebec are obviously getting crazier every day - and I mean they are really psychologically more and more disturbed and more and more out of touch with reality - does not seem to me good reason why the rest of us should go half crazy in order to meet them halfway.

PROF. CREIGHTON: Mr. Chairman, I so far have said nothing in this Committee this morning,

because I came late and I was not present for your opening remarks.

I had not realized that our Prime Minister spoke the other night and referred to the possibility of changes in both the Supreme Court and the Senate, or so I gathered. That came as somewhat of a shock to me and also, I must confess with Eugene, I was very disturbed by the theme of his words and the drift and tendency as I saw it on their analysis and interpretation.

I am further rather disturbed by what has happened this morning, which seems to me to suggest that the Committee ought in effect to begin its work all over again, when I thought we had reached some fairly well agreed positions. We have produced a lot of papers; we have made a great variety of investigations. At the beginning the cultural committee produced some very general recommendations with respect to the French language in the province of Ontario. I thought they were extreme and impractical. We then subsequently requested the presence of various officials in the Civil Service of the Province of Ontario to explain the actual operation in their departments, particularly in education, in justice, and in municipal affairs. we sent out questionnaires. I think it is true to say that we reduced the large generalities of the original cultural committee's report very materially

as the result of these investigations.

It seems that all this work, which has now lasted for two and a half years and in which we have come to some very definite decisions including the position about the Supreme Court, is now to be scrapped. We are to start all over again, and we are to start all over again for the simple reason that more and more violence exists in the Province of Quebec. Now, the simple word for that is appeasement, and I am not in favour of it.

MR. MAGONE: Hear! Hear!

THE CHAIRMAN: On the first point, Professor Creighton, I am not sure if I understand the sense in which you say you are shocked at the comments on the Supreme Court and the Senate: because they came as a surprise to you or because you disagreed with the position?

PROF. CREIGHTON: They came as a surprise. I disagreed with them also. I don't know exactly and I still don't know because, as you have said, you have not yet produced the actual words; but from what Bill Lederman and Mr. Magone said I gather it was very general, though subsequently qualified by some statement with respect to civil lawyers in the Supreme Court. If that is all it is, of course, perhaps there is something to be understood about that, but the trouble with it is the vagueness.

DR. FORSEY: Yes.

PROF. CREIGHTON: And the trouble is that Mr. Robarts is making some very vague statements. He made some very vague statements at this Confederation of Tomorrow Conference which seemed to me to leave the room open for an almost indefinite amount of change.

I objected too to the way in which he introduced the whole subject. He spoke of change as though change invalidated the constitution. Change does not invalidate constitutions. It has not produced in the constitution of the United States, a great country, any sensible change at all. They are 80 years older than we are, and the country is not full of people clamouring because it is divided, and it is a century and 80 years old. This is nonsense.

The other assumption of the inevitable tendency towards decentralization through change, which seems to be accepted by everybody in this country, is equally fallacious.

DR. FORSEY: Hear! Hear!

PROF. CREIGHTON: The opposite way it has happened in the United States - again I say a great country, not a divided, rankless and feeble country - is towards centralization, not the reverse. There is no inevitability in the kind of process we have encountered in Canada, none whatever; we have just

permitted it to happen. To say, as was said in the theme papers, that this great change was the result of a huge protest from the people of Canada against the original system designed by the Fathers of Confederation, is just historically false. Certainly Nova Scotia got discouraged about the prospects under Confederation and asked for a concession. Sure, they held a conference in 1887 at Quebec. They got nowhere with it; resulted in nothing. What happened, what really happened, effectively happened, was that the judicial committee of the Privy Council in fact substantially altered the entire construction of our constitution, and that is all that happened. We Canadians never had anything to say about it. To assume this is the result of some great process in Canada, popular process against centralization, is false.

Now, I feel very strongly about all this, and perhaps I address myself to it too strongly, but to go and start all over again simply because of a violent increase in the demands made in Quebec, accompanied by the exhibitionism and demagoguery of certain people who have appeared in the scene only recently, such as Levesque, who comported themselves at the teach-in or whatever it was at York University like a television personality -- and the truth of McLuhan's statement that the medium is the message was never before so completely realized as it is in

his behaviour -- that we should be coerced into starting our work over again by the activities of those clowns and mountebanks and demagogues seems to me just too much to be borne.

DR. FORSEY: Hear! Hear!

THE CHAIRMAN: Well, it seems to me there is a danger here in confusing perhaps what is reaction to Quebec or anyone else and initiating things, and it is horrible that one can hardly say anything any more without appearing to fall into a cliché, but, let it be said, initiating things that are going to build a better federal system for a better Canada, surely isn't this what this Committee should be thinking about and doing? What is the role of this province and what should the future of the country be about?

DR. FORSEY: Haven't we been doing that? What have we been doing?

THE CHAIRMAN: I am not saying we have not been doing that, but I say surely this continues to be a requirement of the Committee, does it not?

PROF. MEISEL: Of course, Mr. Chairman, you are quite right, but I think we ought note what Bill Lederman said, that we cannot possibly assume that simply because we took a position a year ago or six months ago ---

THE CHAIRMAN: Or yesterday.

PROF. MEISEL: -- that we could still

support the position today. I do not think we are dealing with heritages but with a constantly changing political situation. It seems to me one of the main jobs we have to do is to bring such expert knowledge and wisdom as we have to the practically daily reassessment of how the situation is changing and what Ontario should be doing in this constant change; and I think we ought to think also of the initiative Ontario might take to influence the kind of change.

MR. MAGONE: Mr. Chairman, we do not know any more about change now than we did then.

DR. FORSEY: Not at any time.

MR. MAGONE: The situation was the same then as it is now. We were receiving demands from the Province of Quebec, and we have continued to receive those demands and because of additional demands we have to change our minds. Now, that seems to be the general trend.

Nobody ever discusses the water of the St. Lawrence River: has ever discussed what would happen to the St. Lawrence if there is a separate Quebec. Are they going to have a toll gate at the end of the St. Lawrence? That will affect the whole of Canada.

DR. FORSEY: The United States will have a word to say.

MR. MAGONE: The United States may have a

word to say about that before anything is done about the St. Lawrence.

PROF. McWHINNEY: We have never reacted negatively to this situation. I read the cultural sub-committee report which Donald said is somewhat revolutionary. It struck me as an affirmative contribution and not just reaction to Quebec,

I think it is a good point for Eugene and Donald and others to make. I would be very sorry if our future programme in the cultural area were

pointed to B and B, because B and B in many respects is a massive gold-bricking operation. There are many things you can object to in B and B. I hope we put our programme on our own affirmative basis. It may well be that since Mr. Pearson was prime sponsor of B and B that the initiative at federal level will take another form.

I have had the feeling over the last three years we have been really trying to work out the future of Confederation on an affirmative basis that is in no sense a negative reaction to what has arisen in another province.

There is one thing that I take issue with, Donald. I think the concept of change is basic to law. That is the whole *raison d'être* of the fact, for example, that the common law survives.

It is true of the American constitution, in respect of judges allowing the amendment, if you take its Bill of Rights, there are in fact

16 amendments only in 175 years, but there is continually new content in it. It is a radically different constitution now than it was before 1937. You remember the key date of 1937, the reaction to the New Deal. This is true of the B.N.A. Act.

PROF. CREIGHTON: Institutions remain exactly the same.

PROF. McWHINNEY: No, they don't. There is an entirely new content.

PROF. CREIGHTON: In what sense do they not?

PROF. McWHINNEY: The United States Supreme Court now is radically different from the Court of 1936. The whole concept of judicial legislation is affirmatively accepted; many people say it is too much accepted. The Court as legislators is quite different from this Court of self-restraint laid by the "Four Horsemen".

You see, I think it is in this sense Mr. Roberts is talking about change. If your institutions do not have a continually new growth, then they are dead and it doesn't have to be then formal amendment of the B.N.A. Act.

PROF. CREIGHTON: I am not assuming it all means formal amendment. I accept your point. It is perfectly obvious, so much so that I did not mention it.

PROF. McWHINNEY: It seemed to me the

remarks were stated so categorically that they had excluded the notion of change of institutions.

PROF. CREIGHTON: They do not, and it would be stupid to say that.

PROF. McWHINNEY: I am happy to have your correction. I won't pursue it further other than to say I think Mr. Robarts makes a perfectly legitimate point and, as Premier, he would be very foolish if he did not at all stages continue options for change within existing constitutions without formal amendments of their structure - options for change that might include formal amendment and the like.

There is lot can be done to the Supreme Court without in any way responding to initiatives in Quebec or in any way involving the very basic measure the United States Supreme Court took at its own initiative, reflecting the Congressional legislation, the Judicial Act of 1925 - a dramatic change of United States court jurisdiction.

Mr. Robarts should be considering similar things of this nature, and I hope he is; and this is the sort of thing, I think, that is something our Committee properly should be attending to. I think his remarks, as you reported them, Mr. Chairman, very much envisage this sort of thing. The changes in Quebec give an impetus perhaps and an urgency to what, as political decision-maker,

he is quite warranted in taking account of; but as far as our Committee is concerned, even without the Province of Quebec, there is a huge role. This is continually, as I see it, part of the common law constitutional heritage.

DEAN LEDERMAN: Mr. Chairman, I have never been a member of a political party and I have never engaged actively in the political process in this country, and I am very much an ivory tower person; but it seems to me, looking out from my window in the ivory tower and trying to assess the position in which politicians find themselves, that the Ontario Cabinet and Prime Minister in particular have to live in the political world as it is, and they have to respond to political facts as best they can.

We are their advisers; we are in that position of tendering advice in collaboration with the Secretariat. We are in a position of tendering advice, alternatives, feeding ideas to the Cabinet and to the province. So we have to pay attention to political realities too, and if there is danger, as there certainly is, that the country is going to fall into two paths, if we stand with the existing constitution in all its particulars, then I do not think it is wrong, even for people who try to grapple with things on a purely intellectual basis (which don't for one moment discourage, because it is the

life I have chosen); but even trying to grapple with things in the realm of social sciences on a purely intellectual basis, surely one has to look at the political realities and say: "In a better world I wouldn't want to see this change at all, but rather than have the toll gate on the St. Lawrence, how far am I prepared to go?".

PROF. FOX: Mr. Chairman, it strikes me that whatever the various matters that we have been discussing this morning, the really most pressing problem for this Committee is the question of the conference in February, and this is late December; and that if the Committee is to be of use it might be a wise decision to try to concentrate on that for a few moments and relate some of the other problems that we have been discussing this morning to that.

In particular I think this relates to the problem that you raised for discussion, that is, how we can more effectively organize ourselves, but I would suggest we make this approach to it. In other words, instead of trying to lay out any pattern of organization for all our activities, we say to ourselves that there will occur this conference in February and we have not yet, as I understand it, received an agenda, but you have already some of the things that you think might come up for discussion and that perhaps delineating these a bit more carefully and specifically we might then say: "He

do we organize ourselves in the immediate future to be of maximum use?".

FATHER MATTE: Mr. Chairman, I wish to say that I agree fully with Professor Fox in saying that for our cultural sub-committee there is plenty to do, I imagine. I would like the sub-committee to go ahead as it is.

The other point is, will there be any possibility of some members of this Committee attending this conference in Ottawa?

THE CHAIRMAN: I don't know. That had not occurred to me. I take it on notice.

PROF. McWHINNEY: Will it be a public conference?

THE CHAIRMAN: That appears to be the intention.

FATHER MATTE: I imagine so.

DEAN LEDERMAN: Of course, the Ontario Government does not control the conditions of that conference in the sense that it did here.

THE CHAIRMAN: That is it. I would have to wait and see.

DR. FORSEY: I suppose it would be interesting. I can't see any function at the Confederation of Tomorrow Conference. I regarded my four days there as a complete loss of time. I was interested and I enjoyed listening to certain things; I enjoyed the food, and I was enlightened

on certain rather harsh realities perhaps; but I performed no function whatsoever except to warm the seat of a chair. I certainly am not anxious to attend the conference in Ottawa. I haven't the time to do it. I suppose I might go there in my purely academic capacity to watch the performance, but that is all.

PROF. SYMONS: I think perhaps, Mr. Chairman, I would not quite share Dr. Forsey's feelings about the possible value of the members of our Committee attending the Confederation of Tomorrow Conference. In its simplest terms, I think if we were going to be able to continue perhaps to be of any service to the Prime Minister, it was important for us to be there to see what went on, to assess and to follow the performance and the views of the different participants; but I think perhaps in the informal discussions, certainly I hope when the Premier on one occasion asked us for comments, that it was of service that we were present, and I would not want to see it too much under-valued. I believe that it was something of use and may again be on future occasions.

In connection with the possible work that we might do and I hope we will, to help with the planning and preparations for the February conference, in that same vein is there anything that we might be doing as a committee to assist with the studies that

are, as I understand it, now being initiated on a tripartite basis involving the national capital? Can you tell us anything about the organization that is being created as far as Ontario is concerned to share in the planning, if this is, as I understand it is, a joint approach of the Dominion and the Province of Ontario and Quebec? I am wondering if, in view of our earlier work and interest in this matter, there is some advisory role that we could play there too. It seems to me that this, like the February conference, is an indication of what substantive work there is for our Committee if it is going to continue.

THE CHAIRMAN: We might then with that point go on to the second item on the agenda, and I will meet your question there, Tom, about the National Capital District. "Also consider the role of the Continuing Committee and the coming Federal-Provincial conference". In an earlier discussion I think I had made a mental note, Cliff, you had made an observation about something that disturbed you in that television programme the other night to which I alluded, and I intended to come to you to ask you to report on that, but I think we messed it up.

MR. MAGONE: Mr. Chairman, it was in relation to what the Prime Minister said about the Supreme Court particularly. As I said, when

heard it I nearly jumped out of the chair, because I remembered we had written a paper and I didn't think he had properly read it. He didn't mention it, of course. It was in answer to a question by Charles Lynch, and I don't know that I need say anything more about it.

I might say in relation to what Tom said, that the question of National Capital did come up, and Charles Lynch asked him whether he would be willing to recommend the transfer of property to the Dominion, and of course he didn't come out with anything definite with relation to that. My recollection is that he said, well, he would have to give that a good deal of consideration and one of the difficulties was that the population would not agree with it, the people in that area would not agree with any transfer of property.

PROF. SYMONS: Mr. Chairman, as I hear more about the programme of Wednesday, I feel a growing measure of concern about it. I don't know whether tapes are kept of such programmes.

THE CHAIRMAN: I think Don mentioned ---

MR. STEVENSON: We will have them reproduced. There is even a possibility we might get them by the end of the day.

PROF. SYMONS: I hope we might return in the Committee to some discussion of that episode itself, but we are getting into a new phase and a

very difficult one when the Prime Minister of the province does very much in the way of policy announcements.

THE CHAIRMAN: He did not say anything on that occasion that he has not said several times elsewhere, Tom, and in the last half dozen speeches, nothing there that has not been in the last half dozen speeches, I would say.

PROF. McWHINNEY: And this is his responsibility; in the end he has the political responsibility.

THE CHAIRMAN: That particular interview I happened to have referred to because it was the most recent time on which he spoke publicly, but if you go to Montmorency or if you go to Regina, I think that in the Regina speech particularly you will find most of the things there.

PROF. MEISEL: Before we get off the point, I wonder whether I can come back to something mentioned earlier. Perhaps this is inappropriate and out of place, but you were suggesting that Mr. Robarts had indicated to you that no member of the Committee should feel that he is bound to this Committee for the rest of his days. Of course, this is quite correct, and I was wondering whether we should not make it possible for Mr. Robarts to either abolish or re-constitute the Committee without causing him any embarrassment. He should not feel

that just because he has appointed this Committee, it may look funny if he, you know, dismissed us, and that he is saddled with this kind of organism. He may feel that he has a proper Secretariat and that he no longer needs this kind of Committee.

THE CHAIRMAN: I don't know if you were in when I was speaking about this earlier, John, but, no, I don't think there is any problem of that kind. The only point he made about this, I mentioned it was three years ago next month since the Committee was first working and he said: "My goodness, it is a long time to be presuming on people's private time". That was the only point, and he hoped they did not feel this was a life sentence.

PROF. MEISEL: I realize that. I wonder whether we shouldn't give him an opportunity, if he wanted it, to disband the Committee. One way in which we could do this, I suppose, would be when our three years are up we could say: "We have now had three years. Why don't we resign as a group, if this can be done without embarrassment?". He can then re-appoint a committee if he wants to.

PROF. McWHINNEY: I raised this personally with you about twelve months ago, and this position still applies, and John and I discussed it in a purely personal capacity. I found the discussions tremendously valuable intellectually,

but in Mr. Robarts' case I thought that when I moved, not my domicile but my residence, to another province, I should leave it to you and, as you know, I conveyed this to you and it seemed to me not an unreasonable suggestion that it should work both ways. It may well be that he might want to re-examine ---

THE CHAIRMAN: The first proposition is he wants a committee on confederation to continue. The second point is, as I say, he doesn't want anyone to feel that he has got an eternal obligation. The third point is that, like you, Ted, other people have expressed to me privately that the thing has gone on a long time and has involved a great deal of their time; from which I felt perhaps they were saying: "How does one graciously get out of such a thing when one has not got time for it any longer?".

MR. MAGONE: There is always the chance that the newspapers will say: "What is that Committee doing sitting for two or three years? Is it not another Royal Commission that comes out with a lot of papers and the Government never implements any of their recommendations?"

THE CHAIRMAN: We have had a bit of that from time to time in the Legislature, but I haven't heard anything of it since the Confederation of Tomorrow Conference.

PROF. McWHINNEY: Since the Spring when

the first reports of tri-partisan reaction were so excellent.

There are specific areas, and I mentioned them at the recess, of research. For example, the new issue of the Bar Review, the Centennial issue, has a tremendously valuable paper by Bill Lederman, and there are papers of five different members exploring various options without making specific recommendations.

THE CHAIRMAN: I suppose the point is we have had three years, and I mentioned that the Prime Minister said he felt now was the time for stock-taking in many areas. The Government is entering upon a new session and a new government, and I suppose one way before the new session begins and a lot of Cabinet committees and other things are re-constituted, would be to dissolve the Committee and then reconstitute a new committee, perhaps with different terms of reference or even construction or even personnel, or whatever. This would give one the chance to privately sound out each member of the Committee about his own disposition and willingness to serve again without involving any invidious suggestion.

DEAN LEDERMAN: I think we have to be very careful, Mr. Chairman, that anything which is done about reconstituting the Committee does not embarrass the government or embarrass the process

of trying to hold this country together.

THE CHAIRMAN: That would be less concern about embarrassing the Government, because in the broad perspective they are making these changes all the time. I would not want it to embarrass any member of the Committee, would be more important, of course.

DR. FORSEY: I think as far as I am concerned I can relieve the Government of any embarrassment caused by my presence very easily. I think my usefulness is now completely exhausted on this Committee, and I see no reason why I should continue.

THE CHAIRMAN: I would be glad if, on the basis of this discussion we have had this morning, you would let me convey the sense of the discussion and leave it to the Prime Minister to decide what he wants to do.

On the second item, first of all, Tom, you mentioned the Capital District. An invitation came during the summer from the Prime Minister of Canada to the Prime Ministers of Ontario and Quebec to enter into tripartite discussions at the official level on the future of the capital area or, because these terms become so confused, the National Capital, Federal Capital Territory - what view, let us say, as to the future of the capital of the country. It always seemed to me there is a distinction.

although these are not necessarily mutually exclusive, between bi-national capital and the organic sense of the federal capital district or territory; but in any event, the Prime Ministers of the two provinces agreed to appoint officials to meet in this tripartite group to discuss the question and to define the issues and so on, and to report back to the three politicians concerned.

Now, the Ontario Government appointed Mr. Stevenson from this department, and Mr. Hanson from the Prime Minister's department as the two officials to represent this province in this discussion, and I might perhaps ask Don just to describe what has gone on so far very briefly.

MR. STEVENSON: Well, Mr. Robarts has been very anxious that discussions regarding the future of the Ottawa area be kept very much confidential between representatives of governments; and he has been unwilling to go as far as the Federal Government would like to at this time in publicizing both the fact and nature of the discussions that may take place.

We have now had one meeting of representatives of the three governments, which took place a week or so ago in Ottawa. Before we went up we had one session with Mr. Robarts in which we went through very carefully the resolution of the Committee in September and some of the other

background material that had been prepared for the Committee.

He is at this stage most concerned that discussions on the development of regional government in the Ottawa area take place first, and that some form of rationalization of municipalities on the Ontario side be reached, which will leave other questions about the Ottawa area quite open, that will be quite compatible with forms of co-operation, changes proposed and language status that might come later.

At the present time he is not anxious to get too much further in terms of any discussions on details of a future form of tripart^{-ite}/agreement or the Ottawa area, this kind of thing.

The first meeting we had in Ottawa was certainly not very precise. It covered some of the general objectives that such a series of meetings could cover and some of the areas where obviously future work must take place in more detail.

The Federal Government wants to see the next stage result in the formation of a preparatory committee which will perhaps contain a few more experts on the detail of potential local co-operation and administration than were contained in the group that met the first time. We will be meeting again once in a preliminary way very shortly but I do not think it is until after that that we really get into

any specific details about basic changes.

PROF. SYMONS: Mr. Chairman, would it be in order to say anything about the representation in this process from the Dominion and Quebec? Have you been able to assess that?

MR. STEVENSON: There has been no announcement about who the representatives are from Ottawa and Quebec.

PROF. SYMONS: I see.

MR. STEVENSON: They were, the federal people, from the Privy Council office, from the International Joint Commission, and from the Prime Minister's office itself, and from Quebec from the Department of Inter-Governmental Affairs: but I would think that this group might expand shortly into people with more intimate knowledge of problems of the Ottawa area.

It is a little difficult to say very much at this stage, the main reason being that Mr. Pearson is very anxious that discussions relating to the wider question of the federal government areas not prevent a satisfactory agreement on regional government on the Ontario side, which may come very, very quickly. The Municipal Affairs department, who have been kept informed on the wider questions, has just about completed its discussions in the Ottawa area on the form of regional government. As soon as that is achieved then I think the stage is set for movement on the wider questions. This may not help very much, but it may well be a little

awkward ---

THE CHAIRMAN: I was going to add, the Prime Minister has in hand the recommendation which this Committee made bearing on the capital.

MR. STEVENSON: His one public statement was that he has committed himself to the representatives of the local governments in Ottawa, that he would consult them thoroughly before any basic change is made (I know he has had a number of submissions), before any broader issue ---

MR. MAGONE: I thought he said at one time he would submit it to the electorate.

MR. STEVENSON: He has not committed himself to that, I don't think.

MR. MAGONE: He did publicly. It seems to me I recollect him saying that.

DR. FORSEY: It sounds a little to me as if he were being cautious about something that he might better not be cautious about, or reckless about something where he would be better to be a little more cautious. It sounds a little as if he were selling the idea of special status. I hope that is not so.

THE CHAIRMAN: Are there any other questions on that? I think we may well be back into this again as expert work is required.

MR. STEVENSON: I would hope very soon, because he has been most insistent right now on the

very exploratory nature of the discussions on the broader questions, but I am sure that as soon as he feels that the way is clear on the regional government side, and also, I take it, if he sees more generally expressions of some support for change in the broader question of the National Capital Area, then I think he will be much more persuaded to speed up his discussions on the subject.

We showed him, for instance, an editorial from the Hamilton Spectator of last week which was saying that as far as it was concerned action in Ottawa was of the utmost priority, and this came from a quarter that he did not expect at all.

PROF. BRADY: Mr. Chairman, it seems very sensible for the Government to first deal with the problem of regional government in the Ottawa area. It is a ticklish question in itself but it certainly should be settled before the other problems that arise, and there will be problems, with respect to making the Ottawa area a more suitable capital.

There are some suggestions in this and there are suggestions about bilingual districts which I think we should scrutinize very carefully. I am dubious about the recommendations in the B and B about bilingual districts, the form to take. I think Ottawa would obviously be the first area that we would consider seriously, or should consider seriously for a bilingual district, and the

form it takes is pretty important; but clearly this cannot be discussed until the Government has established a policy with respect to regional government there. I would fancy that is the position of the Government.

MR. STEVENSON: Yes. I think Mr. Robarts is very concerned that if you get public controversy in Ottawa on the question of the broader capital region right now, you may destroy the groundwork that has been done into the regional government question.

DR. FORSEY: I am heartily in favour of his being cautious in such matters, but I wish he would be a little more cautious about some more matters too.

PROF. McWHINNEY: I have the impression from the Quebec press the caution was more related to the political fact, attitudes of the local municipal councillors; in effect that if you wished to have two very broad extremes of the option, surely you wanted to do something there; but on the other question, if you wish it to take the common service type of organization, that the dilemma was really the strong local political figures. Is that an unfair assessment? This was widely reported in Quebec papers.

THE CHAIRMAN: I think so. I would gather from anyone knowing the Ottawa political

situation, that it is not a thing that one can simply dump a new design on without careful preparation.

MR. STEVENSON: Yes, the Quebec position has now become a little clearer, because of the preliminary statement. Mr. Johnson has said very clearly that at this stage anyway Quebec would not consider any proposal which would involve secession of provincial territory; but he does say in the preliminary statement to the Confederation Conference:

"We also think the federal capital
"should reflect the linguistic
"duality of the population. Equality
"of the two official languages should
"be confirmed in all capital area
"government services, be they federal,
"provincial or municipal. To this
"end, the purely federal National
"Capital Commission should become a
"tripartite Federal Capital Commission
"in which the three governments most
"directly concerned, those of Canada,
"Ontario and Quebec, would have equal
"prerogatives, each delegating to it
"the powers needed to administer an
"appropriate territorial area and
"assuming a proportionate share of its

"operating costs."

So this is the first, I think, relatively clear policy statement of any of the three governments on the question.

THE CHAIRMAN: May we leave that one then and go on to give you a report on the so-called Continuing Committee on Confederation. You may recall that at the conclusion of the Confederation of Tomorrow Conference the Premiers adopted a proposal that a committee be struck to be known as The Continuing Committee on Confederation, to consist of the heads of the provincial governments of Ontario, Quebec, Alberta and Nova Scotia; and, as I mentioned in my letter which went out to remind you, to analyze proceedings and results of the Confederation of Tomorrow Conference and to explore the subjects and the topics for future discussion, and to pay particular attention to problems of constitutional change, regional disparities, language practices and rights.

--- At this point Mr. Callaghan arrived.

THE CHAIRMAN: Would you like to come up here, Mr. Callaghan, where you can see and be seen. If you will excuse me a minute, we are coming to this subject in one moment but I am just finishing a brief report on another matter.

Now, the committee of four held its first

meeting this week in Ottawa, sandwiched literally into the Housing conference; and as the result of that meeting the following decisions were taken.

First of all, the Prime Minister of Ontario was elected Chairman of the committee. Secondly it was agreed that a resume of the Confederation of Tomorrow Conference should be circulated as soon as possible to all of the provinces; thirdly, that appointed officials from each government will meet in Toronto early in January to consider recommendations and procedures for the work of the Committee; fourthly, by the end of January submissions should be available to the Committee, indeed to all Premiers and to the Federal Government, setting out what the Committee sees as its task; fifthly the Committee will also be considering appropriate agenda items for the conference to begin on February 5th and to consider the relationship of this Continuing Committee to future federal-provincial conferences on the constitution and other matters. So that is the state of affairs of that Committee as far as they have gone. The supporting work or back-up will be provided by the staffs of the various governments involved. So are there any questions about that?

MR. PERRY: Ian, to what extent will this lead to a sort of unified approach on the part of the provinces on some of the issues, for

example, some of the issues on the constitutional conference?

THE CHAIRMAN: Well, I don't know. I say probably, given the history of the last hundred years, or not at all. I don't know.

MR. PERRY: This is a more direct attempt to achieve a unified approach than any ever made before.

THE CHAIRMAN: I think that is right.

MR. STEVENSON: One thing that Mr. Robarts feels is that even though the February conference called by Ottawa could have almost all of the subjects of concern on the agenda, nevertheless he wants very much to keep the structure of a provincial organization there as an available option in case the federal initiative does not keep on with its steam, however, keeping open all the time the possibility for federal-provincial contact through the course of this Committee.

MR. PERRY: Let us put the question another way. Would it be one of the objectives of this Continuing Committee to achieve a unified approach, or at least to identify differences of approach?

THE CHAIRMAN: I think they have got to decide that, Harvey, out of their early meetings. I do not think they have approached it with any predisposition in that way.

MR. STEVENSON: One real problem is that four provinces cannot speak for ten.

DR. FORSLY: Quite.

MR. STEVENSON: And that really the four can only ---

THE CHAIRMAN: This is a committee of the Premiers, conference committee.

MR. STEVENSON: Right, and can only act in a sort of executive committee capacity in drawing up a schedule of discussions, drawing up perhaps some background papers which can then be submitted to all ten; and I think it is felt by all concerned that if you do get into any kind of possibility of agreement among the provinces, then you cannot do it with just the four; you must have all governments and certainly, if not at the start, very soon after, the Federal Government also.

THE CHAIRMAN: Well, one of the things that we have mentioned now is high in the agenda is the forthcoming federal-provincial conference in the first week of February. This evolved in an interesting manner. Originally Mr. Pearson suggested that a conference be called to reach agreement on the enactment of the provisions of the Canadian Bill of Rights in each province as an ordinary statute of the province. Subsequently he enlarged the scope of that to suggest that it discuss a Bill of Rights specifically entrenched

in the constitution. That was supported by a speech which Mr. Trudeau made last September. Then subsequently over the last few months the scope of the change has been enlarged to declare itself open to any and all suggestions of the participating provinces with regard to constitutional problems. Finally, in his report in the House of Commons in the tabling of the B and B Commission, Mr. Pearson suggested that the conference might also consider the recommendations of the B and B Commission.

So that the conference seems to have evolved not only from provincial adoption of the 1960 Bill of Rights to constitutional form, but to the future of confederation once more. So it may be round 2, Confederation of Tomorrow Conference round 2.

We have Mr. Callaghan with us and we are very happy to welcome you to the meeting. As I understand, Don, for this purpose we wanted to focus particularly on the Bill of Rights, did we?

MR. STEVENSON: Yes, although really I think it was labelled Bill of Rights only because this was the way that portion was originally labelled. Now essentially everything is there on the table, so that one could start with Bill of Rights, I suppose.

THE CHAIRMAN: Well, what we are interested in developing, of course, is the position of the province at this conference. Is there any

other background you or Ed want to put out?

MR. STEVENSON: I don't think so.

Perhaps one might just start, as you suggest, with the Bill of Rights which the Committee did discuss in its November meeting very briefly, and the various options there.

In some discussions, both among members of this Committee and representatives at the Confederation of Tomorrow Conference, there was a good deal of scepticism expressed towards the possibility of getting all ten provinces as well as the federal government to agree to entrenchment of the Bill of Rights. Therefore, what are the options that are available? Provincial statutes, something relating only to specific - if one thinks of language, something relating only to concentrations of population; agreements among provinces or other options.

THE CHAIRMAN: I think we had better let Mr. Callaghan speak to this or give any thoughts he has on the development of this whole question. This is in your territory.

MR. CALLAGHAN: Not really. First, I want to say I have not done any study in depth, but there is one very practical problem that I think you are probably aware of but which I would just like to draw to your attention again; namely, that the McRuer Commission on Civil Rights has been

referred specifically to this problem by the Prime Minister. It was a term of reference that he inquire into the feasibility of a Bill of Rights in the province of Ontario.

I think in trying to prepare some sort of position for him, you would have to take into consideration the fact that probably by 15th January or around that time you will be receiving the first part of that report which will deal with this.

Now, I don't know to what extent he is going to implement that report (there are problems in all Royal Commission reports) but I think the views expressed on that particular Bill of Rights aspect in his report is something that you will have to consider. I don't know really if you want to arrive at any position until you have seen it.

PROF. McWHINNEY: May I ask you, having made representations at Mr. McRuer's request to his Commission and so on, and having followed it with some interest, is it anticipated the report in January will concentrate on the Bill of Rights?

If you remember, the terms of reference were very much broader than that, and he was very interested for the first year in ombudsmen and quite a lot of things. Bill of Rights as such was a relatively minor part of his work at the start.

MR. CALLAGHAN: I understand that the report will be in two parts, and the general principles applicable to Civil Rights in the province will be dealt with in the first part. The Commissioner never said that to anybody. It is just understood that he will deal with it in this way.

PROF. McWHINNEY: He has accepted that suggestion that he report on the Bill issue?

MR. CALLAGHAN: I believe he has. You can't go very far with him, because the Royal Commissioner is very discreet in what he says, but I think you should at least wait until you see what he does say before recommending anything.

PROF. MEISEL: Mr. Chairman, was it January 15th?.

MR. CALLAGHAN: This was the approximate date; it is tentative but it is expected the Royal Commission report will be out.

PROF. CREIGHTON: It may be late.

DEAN LEDERMAN: My impression is that this report will be coming out in somewhat the same way as the B and B report -- it will be coming out in sections.

MR. CALLAGHAN: Yes, two parts.

DEAN LEDERMAN: Perhaps more than two parts, I don't know, but I am not sure that one may not find the Commission's conclusions on the general

problems of the Bill of Rights in the earlier part, but I really don't know.

PROF. McWHINNEY: He started, you see, with specific institutional arrangements like the ombudsman. Then he got into consideration of proposed special administrative tribunals, assuming you get over the Section 96 problem. In other words, it was very much more comprehensive than a Bill of Rights as such; and it is quite interesting that he is in fact going to give this priority in terms of timing of his report; because in a way many of us thought, when we were making representations to him, that he would couch a sort of decision whether you wanted a Bill of Rights with consideration, among other things, of whether specific institutional machinery with a very concrete programme might not make a Bill unnecessary at the moment. This was one argument raised to him.

Are you now counsel, among other things, to the Commission?

MR. CALLAGHAN: No, nothing to do with the Commission.

PROF. McWHINNEY: It is still John Morden, is it?

MR. CALLAGHAN: No, he has retired. It is somebody else, Steve Borins, who has taken over. That was one point that I was asked to draw to your attention.

THE CHAIRMAN: It is a highly relevant point.

PROF. BRADY: Important point.

MR. STEVENSON: One thing I think we feel from looking at the various statements of the Federal Government on this question over the last while, is that the first announcement which was with reference to Mr. Diefenbaker's Bill of Rights and the possibility of having it enacted provincially, this is a concept of the Bill that has long gone by in the eyes of the federal government and one can probably expect rather little attention at the conference to be paid to this; but certainly in more recent pronouncements by Mr. Trudeau and others the question of language rights or group rights has received much more importance. Whether this comes into Mr. McRuer's Commission I am not sure. I know that originally it was more a question of individual rights and here, I think, in line with Dean Lederman's paper of some time ago, perhaps the enactment of a provincial statute containing a provincial Bill of Rights might not be very difficult for the province, considering the number of pieces of legislation now in existence in provincial programmes in the general area of individual rights; but if the Federal Government does persist in a proposal which would purport to entrench or have provincial governments enact

statutes relating perhaps to the recommendations of the B and B Commission or to the broader question of language and group rights, then I think discussion here might probably go beyond what might even be expected in the McRuer report.

PROF. McWHINNEY: It will give a broader perspective, I think. This would, I think, tie into what Eugene was saying earlier. In a way civil rights is only the language rights issue, and the Bill of Rights aspect of what I would call Ontario problems as well as Canada's. The McRuer Commission's first year of evidence was predominantly on the range of matters covered by Sir Alfred Frank's report in the United Kingdom, the problem of bureaucracy and the like, and it may be very helpful in discussions with the Federal Government people in February to point out that civil rights, language rights, are a very vital part but they are only part of the general problem, and that bill of rights in this sense looms less and less as a sort of universal panacea for all ills. There are very specific institutional arrangements that are, it seems to me, more effective. It will give a degree of balance that I do not think federal authorities have always had on this problem.

MR. PERRY: I was going to ask the Chairman when one would normally expect to have the

agenda for this conference, or do you simply read the Prime Minister's speeches and gather it up as they go along?

THE CHAIRMAN: The record is not very good for agendas getting out very early in these matters. As a matter of fact, I am quite concerned about this one, in particular because obviously it is not going to be much help if one gets the agenda the week before. We should have it now at least.

MR. STEVENSON: We have made this proposal that Mr. Robarts write to Mr. Pearson immediately for it.

THE CHAIRMAN: This is right. We are going to push this.

PROF. FOX: Have the provinces been asked to submit items for the agenda?

THE CHAIRMAN: Normally the practice is that the federal people start the ball rolling with sending out an agenda and would ask if you have any other items to add to this. As I say, I think the Prime Minister here will be writing on his own to ask for the agenda forthwith.

PROF. FOX: Is there any indication also as to the length of the conference?

THE CHAIRMAN: No, there is not.

PROF. FOX: On the subject matter it might go on forever.

THE CHAIRMAN: There is some interesting speculation about where it might take place, which I want to check on so I won't pass on those matters which are purely rumour.

PROF. FOX: Opens up all sorts of prospects.

PROF. CREIGHTON: I bet I know where it will take place.

MR. CALLAGHAN: If they are going to open the conference to many points, I assume Bill of Rights is one of the lesser issues, after your last conference.

MR. PERRY: It might not even be on the agenda.

PROF. McWHINNEY: That would be a complete cycle.

MR. MAGONE: Frank, we have had Bill of Rights for seven years. Do you know of any case that has been decided on the Bill of Rights?

MR. CALLAGHAN: There is one lower court decision out west, but other than that ---

MR. MAGONE: Talking about Appeal Court or Supreme Court of Canada.

MR. CALLAGHAN: No.

MR. MAGONE: There has been a Magistrate's decision, I suppose?

MR. CALLAGHAN: Generally, I think it was about 1955 dealing with a Hamilton bowling alleys.

MR. MAGONE: There was a dissenting judgment of Mr. Justice Cartwright.

MR. CALLAGHAN: Yes, but the rest of this decision pretty well wrote the Bill of Rights out of existence.

PROF. McWHINNEY: That was before. I recollect it for about three years.

MR. CALLAGHAN: 1965, pardon me. The Bill of Rights was argued in that case because I was on it, the Lord's Day Act. Really the issue of the Bill of Rights was set up -- freedom of religion specified in the Bill of Rights was set up.

MR. MAGONE: It has been argued thousands of times.

MR. CALLAGHAN: Judgment of Mr. Justice Ritchie.

THE CHAIRMAN: What was this?

MR. CALLAGHAN: They held the Lord's Day Act was intra vires of the Federal Government, but in the course of that case John Robinette argued strenuously that the freedom of religion was being infringed by the Lord's Day Act; and the decision of the Court, without saying so, in effect struck down to a large extent the practical application of the statute.

I think you are faced there, in my own point of view, just looking at it from a really relaxed point of view, in the Court anyway, you are

faced with the fact that there is a judicial Bill of Rights existing in this country and they do not need legislation. Whether or not you need legislation is something for the politicians to decide, but the application of your law, there is certainly fundamental legislation that the judiciary are not likely to let the legislators interfere with.

When you talk Bill of Rights and civil rights at this conference, I am not sure what you are talking about, because I don't know myself what is encompassed in the term. I think before you talk about it generally, you should maybe specify what you mean by civil rights. If you are talking freedom of religion, I think the Courts have pretty well established that this is a federal matter, regardless how you feel about the terms of the B.N.A. Act. If you are talking about freedom of speech and association, things in this area, I am not sure where legislative power exists. I don't think anybody is, the way things stand today.

I think about the only suggestion I would have is that maybe you should specify what you mean, what you think should be in the Bill of Rights, and then maybe look around and see who has the authority to do it. I think it is quite a confusing problem whether or not you need one, of course.

Another problem, if you entrench it you will run into problems you run into in the United States.

MR. MAGONE: If you entrench the Bill of Rights.

MR. CALLAGHAN: Yes.

MR. MAGONE: Once it is entrenched you take it out of the democratic principle: Parliament cannot deal with these things but the Courts can mutilate your constitution as the result of the Bill of Rights as they have done in the United States.

MR. CALLAGHAN: If you look at President Johnson's latest report you will see in the appendices to that report a very well written article setting out the problems that they faced as the result of certain decisions in the criminal law as the result of the Supreme Court's interpretation of the Bill of Rights. It is a problem now of defence counsel and confessions, but there are problems which do arise as the result of entrenching a Bill of Rights, and they are becoming very apparent now, as the Supreme Court of the United States adopts a very liberal approach to it. I think anybody considering it would have to see what a court can do with an entrenched Bill of Rights as opposed to legislative control that exists over judicial Bill of Rights you can always review.

DR. FORSEY: If you look at the list of things that Judge Ahern would like to entrench, you will find that it opens up a vista that is extraordinarily broad and somewhat intimidating in

my judgment. I can imagine some of the things he says about the right to work, for example, would upset a great many trade union applecarts. Perhaps they ought to be, but I am inclined to think that possibly when the learned judge put those things down he did not realize altogether how much territory he might be taking in.

The thing about the indissolubility of marriage is couched in such wide terms that if it went in the entrenched Bill of Rights you might find (and I say it as a layman) that somebody who was married according to the service of the Roman Catholic Church will suddenly decide they want to become Baptists or athiests or something, a decision to which they have no conscientious objection themselves, but nonetheless under Judge Ahern's entrenched Bill of Rights would find they just could not dissolve their marriage.

MR. MAGONE: His right to work is just the right individually to work whether or not ---

DR. FORSEY: It is very broad indeed.

PROF. McWHINNEY: It could be either labour-oriented or anti-labour.

DR. FORSEY: Speaking again as a layman but having some acquaintance with these matters, I think you cannot be too careful about the drafting of these things. You might bring in a tremendous lot of territory.

Everybody who has had any connection with the labour movement knows the Bill of Rights in the United States was used for many years to interfere with all kinds of social legislation.

Now, of course, the thing could change, and the Supreme Court does not take this view of it any more, but it is a frightfully dicky sort of thing; that would involve the exercise of all the legal skill that is available, in order to make sure that it was even reasonably fool-proof.

DEAN LEDERMAN: Mr. Chairman, I think Dr. Forsey's remarks point right to the heart of this matter. I think the over-riding constitutional or political issue is: what is the proper mixture of judicial supremacy and parliamentary supremacy for the constitution? What is the range of matters in which the judge should have the last word; what is the range of matters in which the elected representatives of the people and the government dependant upon them should have the last word?

If you remove too many things from the area of possibility of change by ordinary statute and ordinary democratic processes, you rigidify the constitution pretty dangerously, I think. As I see it, that is the over-riding institutional issue or constitutional issue in the problem of the specially entrenched Bill of Rights. If you are

going to use the ordinary statute, of course that is another matter. I think an ordinary statute used to supply this right can mean a great deal. It is subject to repeal and change by ordinary majorities, but it is not the kind of statute that you can tamper with lightly.

I mean, you can change the Sale of Goods Act without too much trouble, and probably go through the Legislature quietly and nobody ever notices; but you could not change, for instance, any of the existing Code of Human Rights in Ontario (this is all ordinary statute) without having a lot of attention paid to it in the Legislature. So I think you can get some quite significant protection for this type of right with the ordinary statute.

There may be intermediate options too. There are some things that are called directive principles in which the Court would have the power to interpret and use to strike down the statute, but which are constitution principles to which governments and Legislatures expressed their allegiance.

Perhaps they become presumptions that are to govern interpretation; that is, the Diefenbaker Bill is drafted (and there may be more wisdom in this than we have thought) with the presumption of construing all existing statutes in favour of certain

rights, that is, the ordinary statutes, and the idea of directive principles or presumptions of interpretation sounds something like the North Atlantic Charter - that you may not have to go all the way to special entrenchment but there may be something intermediate that has value. These are very difficult issues.

PROF. McWHINNEY: The comparative law experience is completely negative that the directive principles that were originally put in the Spanish constitution of 1931 and then the Irish grabbed them from there and they went into the Indian constitution, the record in all of the countries, the only one that showed any judicial interest ^{from} /any other one was Ireland. The Indian record is completely negative.

It really bears out Mr. Callaghan's statement. The Indian judiciary were strongly judicially-oriented, taking the view that your sort of common law inherent principles, if you wish, which the judges understood they were the custodians of - they didn't need the benefit of statutory or constitutional bills or principles.

I thought that was the interesting part of your comment, Mr. Callaghan, from the viewpoint of all your experience and in practice. It seemed to me you were saying that you feel, and certainly the experience of the Diefenbaker Bill confirms

this (I studied it for about three or four years after it appeared); I tried to collect provincial decisions and except in B.C. there wasn't too much citation, and usually when it was cited in B.C. the B.C. courts reached the same result by citing common law principles. It was in a way redundant.

I thought, in the light of your experience, you didn't feel the Bill would accomplish very much that is not already achieved in the common law principles.

MR. CALLAGHAN: I don't want to be taken as opposing the Bill, because I really have not formed any final opinion myself as far as my own conscience is concerned. I do think, however, that the Courts do offer fundamental principles. I can see the Bill serving political purposes that do not necessarily reach to judicial purposes, and this is a different matter. As far as the judiciary is concerned I don't think the Bill does really accomplish a great deal, but I would imagine there are tremendous political considerations in this country in passing the Bill.

DEAN LEDERMAN: The interesting part is that the Sunday Observance legislation in the United States has suffered, has been given much the same interpretation as the Supreme Court of Canada gave to the Sunday bowling case in this country.

Exactly the same line was taken.

16 MR. MAGONE: I don't think there is anything in the Bill of Rights as broad as the principle that has been enunciated "contrary to natural justice". That principle has been acted upon for years and years, and it is enunciated in the Nat Bell case, which is 1922 in the Privy Council, in which they said: "We do not usually hear criminal cases --" (this was an application for certiori) -- "except in relation to those cases where there has been a denial of natural justice". That decision, if I remember correctly, was 1922. I cannot see anything in the Bill of Rights that is as broad as that statement has been made to be, as it was used in the Courts.

DR. FORSEY: I remember when we had a case in the Supreme Court of Nova Scotia connected with what we considered an inequitable decision by the Labour Relations Board down there, we fought it out to the Supreme Court of Canada. We got a unanimous judgment from the Supreme Court of Nova Scotia, written in strong terms and superb prose by Mr. Justice McDonald, and this was confirmed on appeal by a majority in the Supreme Court of Canada. My recollection of it is that it had to do with certiori and that kind of thing and I think mandamus may have been involved in it (I can't remember now); but both the Supreme

Court of Nova Scotia and the Supreme Court of Canada, if my recollection serves me, took exactly this position that natural justice had been denied in the proceedings of the Labour Relations Board, how the audi alteram partem rule had been disregarded and so forth, and the Board was ordered to hear the case again and deal with it on its merits.

MR. CALLAGHAN: I think it is a fair statement, when you are dealing with administrative proceedings of provincial Boards set up to decide rights of individuals, that the Courts will, if they find bias or denial of natural justice in the proceedings before the Board, they will use that ground to interfere. Notwithstanding the fact that you put in the legislation preventing the Court from going into it, Courts have continually construed these clauses not to exclude them when there has been a denial of natural justice.

Mr. Lederman has written many articles (I guess everybody has) on this view of the Courts, but it does demonstrate they have respected these fundamental rights of individuals.

PROF. McWHINNEY: I think your comments have been extremely valuable. What this raises in terms of tactical response to the federal proposals on February 5th would be something like this: that it might pay to separate the issue of language rights as such from the issue of general

political civil rights, and it might be helpful to bring these considerations home as far as so-called political rights are concerned, that the Ontario experience seems to give a great deal of weight to the fact that the protections are better obtained by the ordinary judicial processes than perhaps more sophisticated machinery like the ombudsman style of arrangement and those matters. but there is no real priority in the area and this would enable the discussion of the language rights uncluttered by pre-conceptions which I really think in some cases are old-fashioned and out of date.

I know in this issue of the Bill of Rights, I discussed it publicly, Marc Lalonde discussed it with me.

--- Off the record

PROF. FOX: There has been another suggestion that has been made in this Committee on several occasions, and I think it arose at our meeting in Kingston with some federal representatives, and I guess it lies within the field that Bill referred to as sort of intermediate choice, that there might be some room for a pro forma bill, statute perhaps, on certain rights that the provinces could adopt if they wanted but which would not necessarily rest on the adoption by all jurisdictions throughout the country. In other words, you could

opt into it if you wanted it and saw some merit in it.

PROF. McWHINNEY: Your language rights.

DEAN LEDERMAN: Uniform statutes in other words.

PROF. FOX: Yes.

PROF. BRADY: Mr. Roblin was arguing the other day in a speech that some procedure of that kind might be desirable.

DEAN LEDERMAN: This is just a special wrinkle on the use of ordinary statutes, a very good one but constitutionally different.

PROF. FOX: It is in the middle area.

DEAN LEDERMAN: Yes.

PROF. McWHINNEY: This is quite a common feeling though. If you take the approximation of the area of commercial code in the United States the sort of thing adopted as model legislation with no incentive to any other States to adopt other than the fact that this could work, you will find because 13 will adopt it and the others will lack / it is either not a matter of priority in Nebraska, say, to say have a modern commercial code, or they are worried about other things.

DEAN LEDERMAN: Again, this would give an ordinary statute more force; there would be more hesitancy about interfering with them once it is passed.

MR. CALLAGHAN: I think Saskatchewan adopted a Bill of Rights or passed one about 1947. I don't know what happened to it.

DEAN LEDERMAN: It is still on the books.

MR. CALLAGHAN: That went the way of all Bills of Rights, in other words.

PROF. McWHINNEY: It is always a footnote when somebody mentions Saskatchewan Bill of Rights, but when we look desperately to find what has happened to it, it is still there but that is all you can say.

DEAN LEDERMAN: I think we must realise that Ontario is quite advanced in this. We have got our statutory provisions and the enforcement by the Human Rights Commission has been very effective, Commission type of enforcement. It is the most advanced position in this country.

PROF. McWHINNEY: On the McRuer Commission I was through this as executive of the Civil Liberties Association; we put a general brief in and I put personal rights in as Mr. McRuer requested. The Ontario response to civil rights has been pretty specific. I guess it has been very empirical, and the main groups have avoided paper declarations, abstract declarations of principle, and concentrate on specific results.

It seems to me, without trying to predict what he will suggest, that this is a very modern

approach, where I felt the federal initiative as first communicated was pretty old-fashioned and pretty abstract, and I think even in the language area the sort of thing that has already been done here in the school area is something done quite independently of Bill of Rights establishment.

DEAN LEDERMAN: This is something which should be laid on the table in the Bill of Rights conference in Ottawa, if it is a Bill of Rights conference. Just as Mr. Davis got up and outlined what had been done and what would be done in education, somebody ought to get up and say: "This and this has been done in Ontario. Some work has been going on for years and it is working very well, thank you".

PROF. McWHINNEY: And independently of any attempt of B and B to observe or respond.

DR. FORSEY: It has additional importance I think, because if you get this kind of thing being done by ordinary legislation in the larger provinces, you may very well have in concrete terms the main part of the thing done. It won't probably do much to my unfortunate fellow countrymen in Newfoundland, because they haven't got it there, but we are a relatively small proportion.

This is one reason why on the background papers I took some objection to the suggestion that unless you had a guarantee of language rights all

across the country written into the constitution you get nowhere.

It seems to me very important to realize, therefore, that action can be and is being taken by, for example, the provinces of Ontario and New Brunswick, which may grant a substantial amount of what is wanted by the French-speaking in the other provinces without amendment of the constitution. I would be pleased to see amendment of the constitution, and I would be pleased to see the thing go further, but at the same time I think it is highly important and highly desirable to emphasize what is in fact being done, has been done and can be done by ordinary legislation, without waiting for the laggards to catch up and without insisting on having an entirely new constitution.

PROF. McWHINNEY: Can that be done, this suggestion Bill made? I remember Mr. Davis' speech made a profound impression.

THE CHAIRMAN: I will have to take note of this and see that is done.

PROF. CREIGHTON: I would like to ask, Mr. Chairman: it has been apparently assumed in the conversation as it developed the last little while, that a Bill of Rights entrenched in the constitution would perhaps be ineffective and undesirable because the Courts also afford the protection to the individual through their concern

for the preservation of fundamental justice, natural justice.

Other people, or at least one or two, have seemed to suggest that it would be a much easier and much more useful business to entrench language rights in the constitution. I don't know what language rights are quite, and I would like to know how Mr. Callaghan thinks they could be entrenched in the constitution.

MR. CALLAGHAN: One point I would like to make, I think if you entrench the Bill of Rights in the constitution, I am not saying it would be ineffective; it would be very effective, it might be more effective than you could ever appreciate at the time you entrenched it. Because what happens then is you have almost a delegation of your authority over rights to appointed judicial officers, whose whole background or social training, upbringing does not necessarily represent the public's view; yet their interpretation of the specified terms in the Bill of Rights can have tremendous impact across the country.

PROF. CREIGHTON: I was not meaning that they would not have power, but whether in our opinion it would be unwise to entrust them with that power. What I was asking about, if that is the case, any rights have been separated, what is apparently regarded as possible to defend them, and

they could stick, would it be wise to entrust the Courts with the enforcement of those rights?

MR. CALLAGHAN: You could very easily entrench language rights just by amendment of the constitution defining where they could take place.

PROF. CREIGHTON: What form would it take?

MR. CALLAGHAN: I think it would be simply that the French language has equal status throughout the country with the English language throughout all public offices, all courts, public institutions.

PROF. BRADY: Section 133 mainly you cover.

MR. STEVENSON: Have you seen the suggested amendment to 133 in the B and B?

MR. CALLAGHAN: I haven't, but there would not be any problem to providing something. How you would enforce that, again you are in a very difficult area, because I don't know what sanction you are going to impose for failure to comply with them. The actual application of it is a very different matter. I am not even sure that you could enforce it in areas across the country. Practically talking about your courts, some areas it would be practical to enforce it; other areas it would be highly impractical.

DR. FORSEY: In the first place you would have to get the unanimity of the provinces before you would get the inclusion.

MR. CALLAGHAN: I am assuming you would get that before you put it in.

PROF. CREIGHTON: In other words, there would be a significant amount of difficulty, not in drafting ---

MR. CALLAGHAN: In the reform involved.

PROF. CREIGHTON: But in the actual form of the statute it would give the Courts power to enforce it.

MR. CALLAGHAN: I think it is difficult to put it in your constitution. It would still be almost a declaration of intention more than something that you could in fact enforce across the country. I don't know how you could enforce two languages across the country in areas where there was no French population.

DR. FORSEY: My wife raised a question with me the other day about what sanction there would be if, for example, the Legislature of the Province of Quebec passed an act purporting to make law in the Province of Quebec that only the French language might be used in the debates, in the journals and records of the two Houses and contravening the provisions of Section 133 of the B.N.A. Act as they apply to the Province of Quebec. She said: "What sanctions would there be?". I said: "Oh, I don't know.". After all, I

not a lawyer, My guess is that if I recall correctly the terms of Section 133, it might conceivably be pleaded that a particular Act which had been passed in French only was not valid, and therefore the chap could disobey it on the basis it was null and void.

MR. CALLAGHAN: It might be. I haven't really given it any thought.

DEAN LEDERMAN: If you appealed to the Supreme Court you would get an answer fast enough.

MR. CALLAGHAN: That is right.

PROF. CREIGHTON: We hope so.

DEAN LEDERMAN: If that were done deliberately in the Quebec Legislature, it would be a declaration of independence; that is what it would be.

MR. CALLAGHAN: That is what it would amount to.

DR. FORSEY: Would you have any legal sanctions if a chap just refused to obey a certain purported act of that kind?

DEAN LEDERMAN: What you are up against, if I may, I should be careful in quoting John L. Lewis, Eugene, (laughter) but John L. Lewis said: "You can't mine coal with bayonets". The viability of law, whether it is honoured and obeyed, does not depend on forceful sanctions; the use that can be made of forceful sanctions is very

limited, and unless there is willing obedience because there is a sense of obligation, you are really sunk.

DR. FORSEY: What would happen if you think that a provincial taxing statute is invalid, for example, as indirect tax, and refuse to obey it? Then the court will say: "Well, it is not valid and therefore you get off scot free". Would a chap then, if Quebec went this way, would a chap who refused to obey one of these acts which was enacted only in the French language, be able to thumb his nose at the people who are trying to collect taxes there?

DEAN LEDERMAN: That would depend upon the outcome of the revolution. It is just that simple, because that is a revolutionary act. One hopes it would be peaceful, but looking at what the United States Supreme Court does, they actually order the Legislature of the State to re-district their electoral districts for the Legislature, and they say: "If you don't make a plan that gives equal representations to these districts, we will make one for you".

PROF. McWHINNEY: It is a very narrow point, but they show very surprisingly deference to the internal arrangements of legislative bodies. Therefore you have your refusal to go beyond the Speaker's signature.

I think it depends in the end on what sort of judiciary you have, who has the last say.

DEAN LEDERMAN: The trend of Americans is to the point of view the term ought to be in their constitution and accepted, at least it should be since the Civil War, and the result is that these legislative bodies, reluctant as they are, they go along, and you do not have to put the Sheriff in. It wouldn't be any use trying to anyway: there are not enough Sheriffs.

THE CHAIRMAN: I think this has been an interesting and valuable discussion. I think we had better perhaps have lunch. Otherwise, I think we are probably finished with this part of the discussion. Thank you very much for coming. We will resume about 1.30, I would think.

--- Luncheon adjournment.

THE CHAIRMAN: I thought that was a very useful discussion on the Bill of Rights question, the question as to how far the Bill of Rights is going to be a dominant part of this forthcoming conference. I wonder if there are any other items that you want to discuss in that regard, or might we go on to item 3?

PROF. FOX: Could I ask what the distribution of our time will be, Mr. Chairman, for the rest of the day?

THE CHAIRMAN: I think we have got the question of implications for Ontario of the recommendations of the B and B. I think that might take us to about 2.30, at which point we can go into sub-committees for an hour or so, and then resume here.

MR. PERRY: I might point out I am the only member of my sub-committee present.

THE CHAIRMAN: You are going to have Dean Dillon here. He says he will be here this afternoon.

DR. FORSEY: It will be as unanimous a meeting as my political party and for the same reason.

MR. PERRY: Agreement about nothing.

THE CHAIRMAN: Very efficient form of committee.

PROF. FOX: You could tell yourself how good the Carter report really was.

MR. PERRY: I am thoroughly convinced of that.

THE CHAIRMAN: Were there any things following our discussion with Mr. Callaghan this morning that you think we should be giving further attention to or further consideration to?

MR. PERRY: What in fact are you going to do if you have no idea what this conference is going to be about? All we can hope is that some

clarification will emerge soon.

THE CHAIRMAN: I thought one would seek points of view on that point. Mr. Roberts will be writing next week to try and get some indication.

I thought the other interesting point was that the McRuer Commission situation bears on this.

MR. STEVENSON: Talking about the McRuer Commission, in talking to the Deputy Treasurer the other day he had had lunch with Mr. Justice McRuer that day, and they asked him specifically if perhaps some of the draft or some of the material going into reports might be made available in advance of the February meeting, so that at least whatever did come up would be compatible with what he was going to say. We got word that Mr. McRuer felt very, very strongly that Royal Commission reports should not even in the slightest be leaked in advance of final publication.

PROF. CREIGHTON: So the report on this will not be out in time.

MR. STEVENSON: The thing then is: will it be out in time, the first volume, for some consideration before the February 5th conference?

PROF. FOX: If it is not even in the air now, how can it be out?

THE CHAIRMAN: It won't be out in time. Events will pass it by, like so many of these things.

PROF. McWHINNEY: He is writing for posterity, though, not simply Ontario.

DR. FORSEY: He should remember what Sir (Roach) said: "What has posterity ever done for us?".

PROF. McWHINNEY: He took this ombudsman up seriously. He went to Sweden and, I think, New Zealand.

THE CHAIRMAN: Some very nice places to visit.

DR. FORSEY: May I make two final points about the business of Ontario at this conference, whatever comes up. I think the discussion of the Bill of Rights business this morning underlines the importance of the whole judicial system and the necessity of looking very hard at what is proposed about, above all, the Supreme Court of Canada, and I am inclined to say the whole question of the judiciary generally.

The other thing is that I hope very much that at this conference if the question arises of transfers of power from the Supreme Court of Canada to the Legislature of Quebec, somebody will make an earnest effort to get an answer to the eight questions which Premier Campbell put to Mr. Johnson at the Confederation of Tomorrow Conference. I think they were pertinent questions, important questions, and they were reasonable questions; they

were put, I think, in an apparently amiable spirit, and it seems to me quite essential that some definition should be given, some definite answer should be requested if at all possible. Otherwise we are going to find it very difficult to understand what it is we are going to be asked to accept.

THE CHAIRMAN: Have you got the transcript handy there? It would be interesting to be reminded what was said.

MR. PERRY: I was there when Johnson said he would answer these, and then in writing if necessary.

PROF. McWHINNEY: I spoke to Faribeu on this and I got the strong impression that he was opposed to answering them, simply because he felt it was forcing him to take rigid positions in advance of the necessity of doing it. I think in some ways it is to our advantage to encourage Mr. Faribeu and others to refrain from rigid positions. If Johnson has to take the stand in black and white now, it has got to come pretty close to the separatist line. The advantage of not taking any stand is that he keeps all his options open.

DR. FORSEY: With great respect, he does not keep them open at all. We do know from Le Devoir and the English language papers, well, he keeps them open after a fashion when he is

outside the Province of Quebec and another part of Canada.

As for Faribeuau, frankly I regard him as slippery as a buttered eel.

PROF. McWHINNEY: But a constitutional conservative in the best sense.

DR. FORSEY: I don't think he is at all.

PROF. McWHINNEY: His writing is certainly. There is not a new idea there.

DR. FORSEY: I wouldn't say that.

PROF. McWHINNEY: I don't mean a big "C" necessarily.

DR. FORSEY: No, I wouldn't call him that. He is a very curious duck. When I say "slippery as a buttered eel", I don't mean by this to impugn his sincerity. I just think he is constitutionally slippery. I am not very interested, frankly, in people's sincerity. Hitler was probably one of the most sincere people that ever lived. If somebody is going to burn my house down, no doubt in the sight of Almighty God he is better to do it being sincere in motive than because he dislikes me, but the fact is later on the house burns down.

PROF. McWHINNEY: I read his writing, and it is conventional, I find, and there are no really new initiatives.

THE CHAIRMAN: Maybe it is margarine, not butter. (laughter)

PROF. MEISEL: Eugene keeps talking about this business of people being slippery and so on, but I think the point is that when you are in a flexible, fluid situation where people do change their position, they have got to be slippery, if that is what you want to call it.

I think the whole point is that we are re-defining a very complex set of problems; that it is simply unreasonable to expect everyone to come out with a complete, fully argued dossier of everything that he wants spelled out to the last letter. I think both sides have to be slippery. You can't avoid it.

DR. FORSEY: But, look, if somebody comes in and says: "I want my legitimate rights" and I say: "Well, what exactly do you want?" and he says: "My rights". "I see, all right, your rights, but what are your rights in your opinion? What do you want?" If he says "Ten dollars", that is one thing; if he says: "I want to cut off your right arm", that is another thing. If he said "Ten Dollars", I may say "Certainly, it seems quite reasonable. I am much better off than you are and you obviously need it and I don't."; but if he said "Your right arm, your left arm, your right leg, your left leg, both your ears", or if he says: "Well, I haven't made up my mind exactly whether I want both your legs or only one of them,

just one ear or two, I don't really know, but I must have my rights and you must agree to give me my rights and then we will settle afterwards what they are", this is exactly the kind of line Mr. Morin took in his famous discussion at the Political Science Association.

Of course, you cannot get it down to every comma, but when you get just vague statements, such as appear in this preliminary statement of Mr. Johnson's, and you get eight very vague passages specifically repeated by Mr. Campbell and questions asked about them as to what exactly does it mean and you get no suitable reply, it does not seem to me satisfactory.

If I am told somebody wants his legitimate rights and he has not told me what he means by that, how can I agree to write a blank cheque? This is what worries me. I think we have got to be given a little more summary -- surely we have to have something more in the way of precision. You can't write a constitution which says: "Quebec shall have all the power necessary to do whatever it wants to do".

PROF. MEISEL: The point is, the meaning of these various things is going to be expressed and argued about for the next five or ten or fifteen years. To expect that this all can be done in one conference or that it should be done in

one conference, seems to me to be utterly unrealistic, and we have got to learn to live for many, many years with a great deal of uncertainty and lack of precision, and the best we can do is to tackle one of these problems at a time, separate one thing and then move to another; but I think that this can only be done if the positions of the various actors do not solidify too soon.

DR. FORSEY: I think when you come to item 1, you have got to know what item 1 is.

PROF. MEISEL: I agree with you.

DR. FORSEY: I quite agree, I think this may take a very long time, but one of the factors in the situation I have encountered over and over again in discussions at various conferences is:

"But there is not time. This has got to be settled quickly".

Out of that Banff performance in 1964 we were told by Morin and company and that fine fellow that was brought up in England and now has a French accent in talking English --

PROF. McWHINNEY: Who is that?

DR. FORSEY: That fellow sociologist.

PROF. MEISEL: Phillip Garigue.

DR. FORSEY: yes. Then they told us in so many words: "You must settle this quickly, right away, because if you don't the students will get you. It is a matter of months at the outside".

PROF. McWHINNEY: Look how wise you were to ignore them and take no notice at the time: you still have your options four years later.

DR. FORSEY: This was put over and over again: "You must do something very drastic and you must do it very fast."

PROF. MEISEL: Depends what you mean, I think. It is very important that Johnson at the conference said that these things could not be done overnight and would have to be done over a long period of time. This seems to me a lot more important than what Jacques Yvan Morin or Faribeau said.

DR. FORSEY: I know. I merely mention that they put the heat on and say: "Everything is going so fast, you have to settle everything and settle it quickly".

We were told even this morning by Father matte that things were moving frightfully fast in Quebec, and there is a certain amount of pressure in the situation which cannot, I think, be altogether ignored. I could not agree more with your approach to this in dealing with questions item by item and taking time over it and trying to think it out. One of the things I am afraid of is that we will be under pressure to settle quickly or you will get worse; every day you delay means you are close to the point of no return - and of course the point of

no return is separatism. Well, for me it is not the point of no return, and I think there are worse things, much. I decline to be frightened by this. I am horrified by it, but not frightened.

THE CHAIRMAN: I think we had better go on to item 3: the implications for Ontario of the recommendations of book 1 of the Royal Commission on Bilingualism and Biculturalism. I think this raises two questions: your view of the kind of response that the Ontario Government might or should make at this time and, secondly, the kind of study, if any, that we should do of this work in the context of our proceedings.

DR. FORSEY: How many of us have read it? I have only seen the press reports.

MR. STEVENSON: Mr. Chairman, I might say we would have hoped to get copies and distribute to all members of the Committee, of the report, if you haven't copies so far.

DR. FORSEY: I think I can get mine. I think it is a pity to have the Secretariat bothered with acting as a sort of book agent for me. I will get mine, thank you, but I wondered, from the press reports I have seen, they looked on the whole pretty reasonable and I would feel very sympathetic. I would think there are certain points of it which would need a bit of rather careful study from the point of view of practicability, but in general

I thought it seemed like a pretty reasonable sort of approach to the problem.

PROF. BRADY: I just got it the day before yesterday from the Queen's Printer, and read it rather hastily. I think the general ideas are reasonable, as Eugene says. I think some of the recommendations are questionable, but I would need to think about them. For example, the scheme of bilingual districts for Canada, extending across Canada is an elaborate and rather complex scheme, recommending not merely that such districts be devised by provincial governments in provincial jurisdictions, but with the federal authority exercising a certain supervising direction and a federal-provincial body to regulate and supervise.

I think that scheme I would be doubtful about. It needs study at any rate. I am not emphatic about it at the present time because I read it very hastily. There are a number of other recommendations that likewise, I think, need scrutiny. I would think, Mr. Chairman, we really all should study the report before pronouncing upon it. It is essential actually that this Committee should do so and come up with perhaps more concrete suggestions for the provincial government with respect to it.

DR. FORSEY: I was worried by what I saw on the press reports about the sweeping nature of

the recommendations for the use of French in the Ontario Legislature, simply from the point of view of the problem of finding translators to do this work, if you are going to have to go years back and translate previous Acts. This worried me because I think the problem of translation is a real one and a difficult one. There are a lot of people who are reasonably conversant with both languages who would be, to say the least of it, very rash to set themselves at work or offer themselves as volunteers to translate legal documents. I am sure Roget will agree there are too many people are prepared to arrive on the scene.

PROF. CREIGHTON: When the first preliminary report of the B and B Commission came out, I got a copy and then was subsequently given an additional copy, or members of this Committee. I was prepared to buy a copy, and I intended to, but I really don't want two of them. Is it proposed you will send them out, or do we get them ourselves?

DEAN LEDERMAN: I don't care. I sent a note to Don asking about information, and this particular question came up. I am quite prepared to get mine, but there is no Queen's Printer's store in Kingston and the Queen's Printer insists on money orders and so on. I am quite content to get it for myself. I really don't care.

PROP. CREIGHTON: I don't either. I would just like to know.

DR. FORSEY: I don't care, and I will be happy to reimburse the Government of Ontario.

MR. STEVENSON: Let us send copies to anybody who has not got one already.

DEAN LEDERMAN: Let us put down names of who would like to have a copy.

THE CHAIRMAN: We will pass a list around the table this afternoon.

DR. FORSEY: I can walk across the square and get one.

DEAN LEDERMAN: I have trouble getting one simply as a matter of physical convenience and time.

PROP. BRADY: A rather k-e-y subsection is 418 on page 135:

"We recommend the adoption of a new
"version of Section 133 which might
"read as follows:

"1. English and French are the
"two official languages of Canada.
"2. Either the English or French
"language may be used by any person
"in the debates of the Houses of
"Parliament of Canada and in the
"Legislatures of all the provinces,
"and both those languages shall be
"used in the respective records and

"journals of the Houses and the
"Legislatures of the provinces
"of New Brunswick, Ontario and
"Quebec, and either may be used
"by any person in any pleadings
"or process in or issuing from
"any court of Canada established
"under this Act, and in or from
"any of the superior courts of
"the provinces of New Brunswick,
"Ontario and Quebec. The
"Acts of the Parliament of Canada
"and the Legislatures of the
"provinces of New Brunswick, Ontario
"and Quebec shall be enacted and
"published in both English and French.
"3. The provisions of subsection 2
"shall apply to any additional
"province in which those persons
"whose mother tongue is either English
"or French shall reach or exceed
"ten per cent of the population of
"the province; and to any province
"which declares that English and
"French are its official languages."

And so on, and there are some other provisions.

Now, the Commission is not dogmatic in one way. It recognizes, it states on a number of

occasions actually that quick enactment of terms that must be expressed in a constitution is perhaps not possible, that there are difficulties; but there is a little bit of contradiction, I feel, between the general declarations and the procedures suggested for embodying these in the constitution. I hardly think the Commission recognizes some of the difficulties of doing so.

I am in sympathy with the general recommendations, certainly, but I think that the realization of these ideas must take place in a sort of piecemeal way. I think the vital thing, of course, is for provinces, and certainly for the Province of Ontario, to express its intention to realize them, start with what is feasible and go on to the other portions of the recommendations as it is feasible. I do not think there would be any point, say, for Ontario recognizing or putting in law some provisions about bilingualism that it cannot practically realize at the time. I would suspect that it cannot practically realize at the present time the bilingualism that is suggested by this Commission. I think it should start to make plans to survey how it may realize these ideas. That sort of thing, I think, should be examined closely.

THE CHAIRMAN: Well, I confess I haven't

got far enough into it to discover this, but do they make any provision for the practical, are their recommendations bold, or do they suggest any approaches to the question of practicability?

FATHER MATTE: They do specify the various districts, bilingual districts.

PROFESSOR BRADY: They have a good deal on bilingual districts and how they are to be constituted. There again, they have a scheme that differs -- we discussed the problem of bilingual districts here in the Committee. I think we were then thinking in terms of having certain counties, as I recall was it 11 or 12 counties?

MR. STEVENSON: Eleven counties and districts with 10 per cent mother-tongue French or over. If you take 15 per cent, you would have 9 counties and districts.

PROFESSOR BRADY: I take it if we were establishing bilingual districts in Ontario, I think it is a good thing that we did at the time, beginning, I hope, with Ottawa. I think our plan of following the counties is better than their scheme, which is rather intricate. They take census areas and relate them to units of government and they imply co-operation between the federal and provincial. Is that right, Charles? You have read this, I suppose, in your work upon

this question.

MR. BEER: It seems to me that they stress the fact that the units of government which now exist can be used, and they mentioned specific county units which would tie in with the discussions which we had. They said that for the purposes of a lot of their statistical studies they used census divisions, particularly in the west, and these were the only divisions used; but they did mention there was no reason why county units could not be used, for example in Ontario, although they did ask for co-operation between the federal and provincial governments with respect to what kinds of services would be located within those --

MR. STEVENSON: They went further though. The only problem with this is that the basic purpose of the recommendation is to deal with concentrations of French-speaking population; if you did have the 10 per cent or over of a county's population concentrated in one corner of the county, with the other three-quarters being essentially English-speaking, then you perhaps might wish the boundaries of the bilingual districts to correspond more closely to the linguistic concentration, and it might then dip into the next or neighbouring counties

The only problem is that they do become very difficult if you are talking about applying the concept of bilingualism to official services such as

a county court or a regional government, something like this. So that in the first place, if you just take their county or district boundaries, it is very close to what we were talking about too.

DR. FORSEY: I suppose when they speak of Dominion-provincial co-operation in this matter, they might possibly have had in mind the probability of a province re-adjusting some county boundaries for this purpose.

MR. STEVENSON: Yes, so they may too, or for the provision of federal government services.

DR. FORSEY: Yes.

MR. STEVENSON: And that they would hope that although the federal government would provide bilingual personnel much more generally across the country, that nevertheless there should be a parallel between recognition simultaneously by the Federal Government and the provinces of officially designated bilingual districts within a province.

PROF. McWHINNEY: There was an article by Harold Greer published in the Montreal Star and, I presume, the Toronto Star, was it last night or the night before, that purported to be based on discussions with Ontario officials. It suggested a basic conflict between B and B recommendations in Volume 1 and Ontario policy towards the issue of the districts, the way bilingual districts would be composed. It was put forward that Ontario felt B and B had not studied the matter very

thoroughly.

THE CHAIRMAN: As far as that article by Greer is concerned, he spoke to no officials in that position, no officials in the province, that is, so if he spoke to any Ontario officials they are people unknown, and a fortiori because they were told by the Prime Minister that he would be preparing to make a statement on this and he preferred if there were no discussions by officials with the press. So this is a matter of some high invention.

PROF. McWHINNEY: His point though, apart from his inventing it, this apparent difference, would it reflect in any way the choices as they now exist between the districting envisaged in B and B and what so far has been done?

DEAN LEDERMAN: A related point, does the B and B recommendation envisage a federal power to designate these districts?

MR. STEVENSON: Officially designated after consultation between the province and the Federal Government. They would be designated really by both after agreement. If agreement could not be reached, it was recommended that either or both levels designate their own districts for their own purposes.

PROF. McWHINNEY: What I want to know, I take it if there is going to be a general national

movement to accept B and B Volume 1 as the basis for a national programme for all provinces in this area, is there any special reason why Ontario action in this area on the language question, which so far has made what have been regarded as very impressive steps in other provinces, is there any reason why it has to be particularly integrated with B and B Commission's designation of districts?

PROF. MEISEL: Mr. Chairman, I think that one has to recognize that the B and B people spent a great deal more time than anybody else, including us, on these problems, and I think that we ought to study very carefully what they have recommended and the kind of qualifying statements that they have added to their recommendations, so that we get some sense of their own realization of difficulties of implementing these things. I think when we have done that, then we can look at what our thinking was before this stuff appeared and see if there is any divergence or conflict. It seems fruitless at this point, without having properly studied the B and B recommendations, to discuss them very much since we will have to do it all over again anyway once we have read the report.

PROF. CREIGHTON: Hear! Hear!

DR. FORSEY: I am still worried about this business of translation of records. I do

not know how it would be possible to make an estimate of the feasibility of that. One wonders. I mean, at Carleton they said gaily that there would be no difficulty in finding plenty of translators; that you could pick them up all over Europe. Well, I am not so sure how many Frenchmen, Belgians or Swiss you could get over here to act as translators; and I am not sure that with our official documents they would not run into some difficulties. I am all for taking this just as far as it can be done, but I really do worry about this.

My recollection is that we were discussing the application of this to the Courts, when our legal members indicated that there were quite a lot of practical difficulties there, at least in the immediate future. I am afraid my recollection of what they said is somewhat hazy, partly because I was too ignorant to understand it all, but it struck me that the points they raised sounded pretty formidable; and that it might be wise for the Ontario Government, in certain statements it makes on the subject, to make some of the cautious provisos that Alec Brady was mentioning just now. It would be a pity to get caught in an undertaking to do more than the Government ultimately found was feasible, because they would create a very bad impression afterwards.

MR. STEVENSON: Mr. Chairman, I think this is very true. As far as I can see, the toughest part of the whole report to implement in Ontario would be in the judicial area. They recommend a bilingual Appeal Court eventually. They recognize it will take quite a while, but I do not think they recognize quite as fully as they might, the difficulties of having French as an official language in lower courts, while you do not have a bilingual superior court.

In the body of their report they do recognize that in some parts, particularly judicial, it will require quite a period of phasing-in, but they said very clearly that this basic recognition of phasing-in or declarations of intent is something that should be dealt with as quickly as possible.

PROF. McWHINNEY: A bilingual Appellate Court would not have to mean all the judges. You are dealing with issues such as the quorum. How many now are bilingual?

MR. GREATHED: None after Mr. Landreville.

MR. SEGUIN: Two in the Supreme Court; none in the Appeal Court. Chevrier was the last one.

DEAN LEDERMAN: There have not been in the Court of Appeal for a long time.

PROF. McWHINNEY: What might be possible may be as under the Supreme Court of Canada Act you

can create special provisions for making High Court judges ad hoc, Appeal Court judges for French language appeals, if you are trying to escalate into this in easy stages.

PROF. MEISEL: Mr. Chairman, I cannot help but think back to discussion we had at least over a year ago, I think, when I found some of the arguments that Eugene presented most appealing. We were then discussing, I think, the whole question of whether perhaps the Prime Minister of Ontario ought to make some sort of ringing pronouncement in which he would state his goodwill and general interest in the matter of doing something for Franco-Ontarians particularly. Eugene Forsey argued then that it was very dangerous to make promises which you cannot fulfill, because then you can quite genuinely be accused of ill faith, bad faith. While I was convinced of this then, I think now that in the present circumstances the status has changed, and that the kind of decision which we shall have to make is whether we now think, as I happen to, that in view of what has happened and in view of the B and B report, and so on, that now the time has come that the Prime Minister of Ontario must make a statement of intent, realizing fully that some of the things will take quite a while to implement but that if he does not do so now, he has also to make a statement because in view of the B and B Commission

report and what has gone at the Conference here and before, he has become, whether he likes it or not, a terribly important national figure in this sense, and if he remains quiet he will be as eloquent as if he says something.

DR. FORSEY: I would not have him remain quiet, but I would say it was wise not to make too sweeping general statements. I would think it was wise to put in some qualifying phrases, as I understood Alec to have in his mind. I do not say the Premier would use exactly the same phrases, but something that would allow a little bit so that if the statement of intent was not fulfilled this year, next year or even five years from now, he would not be accused of this bad faith. He cannot sit quiet.

He has put out this statement on bilingual secondary schools, which I thought was admirable but I thought it was admirable primarily because he was careful to state that there would have to be a committee appointed to look into the feasibility of the various aspects of this thing so that they would not undertake to do something which was not feasible. I thought the combination there was excellent. He was not saying: "Tomorrow a whole lot of bilingual schools will open up" and then coming along in six months or a year and saying: "Sorry, none of them are opened up, and we looked

into it but there are lots of difficulties. Really, it would have been wiser to look at it". In this case he is saying: "We are going to go ahead with it but do not expect it is going to happen tomorrow because there are certain practical problems have to be solved".

PROF. BRADY: He should candidly tell about the difficulties, I think.

DR. FORSEY: Yes.

PROF. BRADY: I can't see any objection to that. In fact it would make a good impression.

DR. FORSEY: Honesty is the best policy.

THE CHAIRMAN: It really boils down to one of three things. Declare yourself to the extent that you share a belief in these things in principle. Secondly, point out what you are already doing and what your plans are. Thirdly, point to some of the practical difficulties that are bound to develop.

PROF. MEISEL: The fourth being that certain measures are being taken to examine the document and to see.

THE CHAIRMAN: Yes.

DR. FORSEY: Taken immediately. He might even, if he wants to lend a certain air to it, use this statement which Mr. Smallwood used about Mr. Johnson's preliminary statement: he might refer to the B and B report as "this is an

entrancing report".

PROF. CREIGHTON: Mr. Chairman, I think it is wise that we postpone this discussion, because there are some of us, including myself, who have not read the report, but before we do so I just want to ask one question of Mr. Stevenson.

He seemed to imply that the area of justice was the area in which the recommendations of the B and B Commission would be implemented with most difficulty. I wonder what those recommendations are with respect to municipal institutions.

We discovered a marked reluctance on the part of municipalities to which we sent that questionnaire, to embark on the extra expense which would be considerable. We got returns from municipalities in which there was a vastly superior percentage of French-speaking population than 10 per cent, replies that they were conducting all their business in English.

Is this an area in which it would be easy to apply the recommendations of the B and B Commission? It seems to me extremely difficult and would be undertaken by the municipalities with great reluctance.

MR. STEVENSON: Yes, there is no question this would be difficult too. However, I think if you take the problems about judicial districts, and particularly the Appeal Court proceedings, there

is really nothing now that would come close to meeting the Commission's recommendations. In municipal services at least in those areas which might be classified bilingual districts, you have as a matter of practice in operation a number of bilingual people, although you may not have the bilingual services at all. I think they talk here about the phasing-in of local municipal government services in both languages, particularly those services first that deal directly with people, and then moving into those which are of a general government nature.

PROF. CREIGHTON: Yes, I know, but my point is, is this something that the municipalities in fact may not want to do unless you force them to do so?

THE CHAIRMAN: Yes, I think the point is that there are difficulties in both cases but the reasons are different. In the judicial system it is because of the judiciary. In the municipal thing, it is perhaps because of the political sentiments and attitudes.

PROF. CREIGHTON: And the expense.

PROF. BRADY: There are some words of the Commission that are very relevant to the question raised by Professor Creighton, and I might perhaps read two sentences:

"We began by rejecting a proposition

"that in our eyes is unacceptable, that
"is, the provision of services in the
"minority language only to the extent
"that the minority requests. A system
"of that kind would constitute no real
"guarantee. It would be at the mercy
"of more or less arbitrary interpretation
"by the authorities of the day. However,
"we have noted earlier that in a province
"where services have never or rarely been
"offered in the official language of the
"minority, the minority may by force of
"habit have resigned themselves to the
"situation, even when they considered it
"unjust. We need more objective
"criteria than this, criteria founded on
"something more tangible."

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DR. FORSEY: The expense aspects of it
can presumably be met by the provincial government
concerned undertaking to bear the extra expense.

DEAN LEDERMAN: I think if there is any of
this trouble we can buy our way out of, we may pay.

THE CHAIRMAN: It comes at a very unfortunate
time, because there is going to be quite a lot of
buying of provincial services in the next little
while.

MR. STEVENSON: There is even the
suggestion that the Federal Government in certain

cases could provide financial assistance to the extension of bilingual services.

PROF. CREIGHTON: I should think the English-speaking municipalities of Ontario would be intensely indignant at any such arrangement; that they would want to pay for their own services which they felt would have been just as important as the others.

DEAN LEDERMAN: I would think the Court of Appeal would no doubt have to deal with things which had originally been tried in French, but for a long time it is going to have to deal with them on the basis of high class translations of what went on.

PROF. BRADY: Which has been done before by Courts.

DEAN LEDERMAN: It has to be done when any language other than English has been used in the trial when as a matter of natural justice it may have been used.

DR. FORSEY: About municipalities, can anyone tell me exactly what the position is under the Municipal Code of Quebec? I remember in Quebec running into a provision with respect to the right guaranteed by the Municipal Code of Quebec for anybody to use either language in Municipal Council, is that right?

THE CHAIRMAN: That is right.

DR. FORSEY: How much does it go beyond that? How does Chicoutimi, for example, keep its municipal minutes?

MR. SEGUIN: I am not saying about minutes but I know all the forms and the calls are bilingual; tax notices and assessment notices, it has to be.

DR. FORSEY: In both languages, even, for instance, for people like Chicoutimi?

MR. SEGUIN: Or Val D'Or.

PROF. FOX: The report covers that all, Charles, page 100.

DR. FORSEY: But the minutes do not have to be kept ---

PROF. FOX: It says for larger municipalities in Quebec governed by the statutes and so on - each council may determine its own proceedings, public notices must be given in French and in English. So proceedings, if that includes minute-keeping, they may keep them in either English or French.

DR. FORSEY: This seems to be a reasonable provision. It is adopted elsewhere. The thing that would be much more difficult to get would be some kind of sweeping arrangement by which the city council of Hamilton will have to keep all its records in French. I don't think this has very much chance of success.

THE CHAIRMAN: Well, I suppose that insofar

as many of us, including our Chairman, have not really studied or read the document, we may be getting a little ahead of ourselves in this detail, and I would like to see us go into sub-committee for a period now.

Mr. Perry made a remark to me earlier this morning that was interesting, I thought, in terms of our work, that we had begun looking at very detailed subjects; we then had gone through a period of very general inquiry; and we seem to be back now where we began with particular studies. This reminded me, Ed, that you earlier had referred to the two documents that were under way over the summer, one of which was the work of the Committee and the other was some of the particular subjects. The point I am coming to is I still think we have, as efficient use of our time, we have got a great deal of material we worked on and studies we have done. For example, Dean Lederman has done several papers on the Bill of Rights matters and so on.

We should not overlook the fact that as we try to identify these questions that the Government is going to have to put firm policy on, that we have a great deal of material here. Professor Watts' paper, for example, on the Senate is tailored to measure for this kind of exercise. Do you want to comment on that?

MR. GREATHED: Yes, you will recall that

the initial document was distributed to the members of the Committee and Professors Forsey and Fox pointed out a couple of omissions there. I am afraid we were just getting to work on the other ones and were side-tracked by the Confederation of Tomorrow Conference, but I think it is not unreasonable to expect that we could have these for the Committee in the next few weeks and have them sent out.

THE CHAIRMAN: In the sub-committees, I would like to suggest that some attention be given, first of all, to discussing matters which this new Continuing Committee on Confederation might address itself to; then to consideration of the other priorities in our own projects for the coming Federal-provincial conference and for our own work here; also thirdly if one could consider a bit the future of the sub-committee structure as I mentioned this morning, what matters remain to be done by the old sub-committees and what matters could be better done by the task force approach, by members of this Committee and civil servants as I have suggested this morning.

Now, since the constitutional and cultural are presently much more to the forefront, I don't know whether it might not be better, Harvey, if, rather than you and I sitting in dialogue (literally interpreted) we might not be better addressing some economic wisdom to the other groups. Because

I think whereas issues are going to be joined by cultural and constitutional grounds, some of the economic and financial points may be put at the same time rather than trying to deal with the economic things per se.

MR. STEVENSON: One thing, Mr. Chairman. If one does take the terms of reference of the Continuing Committee on Confederation, essentially you have one area which is economic, regional differences; another one which is constitutional, the whole question of the constitution; and the third which is cultural, if you want to put it this way, the language question.

MR. PERRY: We are just working on a wider policy anyway, and I am sure any of the studies would be an agreeable change.

THE CHAIRMAN: We have a lot of work going on on tax reform and so on, all of which touches on the economic. How long would you like to take in that, an hour, and then come back at 3.30? Does that give you enough time or too much?

DEAN LEDERMAN: My train goes at 5.00.

PROF. McWHINNEY: I am also leaving early.

THE CHAIRMAN: Put it this way. Let us work back. We should conclude by 4.30 at the latest then. I think we had better take an hour in sub-committee and an hour back here or whatever time you may need in plenary. We will meet in

the usual locations.

--- The Committee resolved into sub-committees.

(THE CHAIRMAN: Would the meeting come to order. I think we could call on the Chairman of the cultural and educational sub-committee to make the first report.

PROF. BRADY: (Our sub-committee recommended that a committee to organize the task forces, composed of the chairmen of the three existing sub-committees be established and asked to sit in the very near future. The Chairman of the full Committee should also sit with the group. This organizing committee should select subjects and personnel of the task force committees. That is recommendation No. 1.)

PROF. CREIGHTON: Should not be the existing policy research committee, I hope.

PROF. BRADY: No.

THE CHAIRMAN: Could I just get the structure again? You would have the task forces and a co-ordinating committee for the task forces?

PROF. BRADY: Yes, that is right.

PROF. CREIGHTON: Imperial General Staff.

THE CHAIRMAN: Who co-ordinates the co-ordinators?

DEAN LEDERMAN: You do.

MR. PERRY: The Chairman has the same duties.

PROF. BRADY: I think it was not mentioned that of course the Chairman, I think, should sit on this task force organizing committee. Any questions?

THE CHAIRMAN: Any information or amplification of that?

PROF. BRADY: The second suggestion made is that in view of the fact these committees were being launched into orbit as it were, in January, it would probably be undesirable to hold a plenary meeting of the Advisory Committee in January. There will be meetings unquestionably of these task force committees.

Incidentally, I forgot perhaps to mention, I should have mentioned in their organization, that at the beginning they would address themselves particularly to the subject matter of the February conference (presumably we will discover some time early in January what the agenda of that conference will be) and in any case that the report of the B and B Commission, which after all, as Mr. Pearson said, would be put before the conference, is a topic that our task forces committee must examine and be prepared to make recommendations on.

I think you wished some suggestion about how the Continuing Committee could be assisted. Well, it was thought that a committee especially of economists (it might indeed be the existing economics committee) might address itself to what seemed to be

the major - one of the two or three major questions of this Continuing Committee, namely that eternal question of the disparity between provinces and the attitudes of especially, as we call them, the under-privileged provinces and how their problems would be dealt with in an equitable and effective way.

I think those are the suggestions of the committee without any embroidery, unless some members of the committee have anything to add to what I have said.

THE CHAIRMAN: Well, any thoughts or reflections on those suggestions?

PROF. SYMONS: Mr. Chairman, I think it might be clearer to add that in our discussions of the educational sub-committee, we particularly welcomed the task force idea because it would provide an opportunity, while keeping the sub-committees for the general function, to break into different patterns from time to time and get fresh combinations of people looking at questions.

THE CHAIRMAN: Well, it sounds as if you had a productive time. Perhaps we might hear a report from your group, Bill, and we can compare notes on them.

DEAN LEDERMAN: Mr. Chairman, on the matter of structure, essentially we ended up in the same position as Dr. Brady has outlined, namely,

that we think the task force approach and the integration in different combinations that it would effect, is something that we ought to follow, in addition to whatever remains (and some things do remain) to be handled by the sub-committees which have been our subdivisions so far.

So I do not think really that I would add to or differ from anything Dr. Brady has said, and I hope I am interpreting the general feeling correctly when I say that.

Now, another point I would make goes to the nature of the things that task forces might undertake. In thinking about the work we have undertaken, the things we have done in the constitutional sub-committee for the last two or three years, we have, I think, in one way or another, effected fairly complete coverage of what you might call the formal institutional topics that arise in connection with the constitution. In the traditional, formal and institutional ways we have touched on one topic after another, and this is not to say that everything has been dealt with thoroughly or satisfactorily dealt with, but somehow we have touched on every substantial field. There may no doubt still be things to be done in the way of refining, filling in of gaps, pulling together of things we have done, but we are really inclined to think the main thrust in

the future may take a more functional turn and instead of saying what should the powers of the Federal Parliament be, we say: "What is the nature of the problem of air and water pollution in this country, and what part do provincial, federal and municipal governments have to play to bring it under control?".

THE CHAIRMAN: Pay too.

DEAN LEDERMAN: Yes, pay; but what is the position now and what happens if you change the distribution of powers respecting water pollution?

Now, there is one example, the whole question of taxation, the division of the tax harvest, can be approached in this way; and that means a task force which has on it economists who can debate with lawyers, and lawyers who can bring special constitutional knowledge to add to what the economists know.

The same thing can be said about banks and financial institutions, financial markets, securities regulation.

The same thing, I think, can be said about education. I do not think that the distinction which the Federal Government has made between re-training for adults for different jobs on the one hand, as distinct from all other forms of education, I do not think that is ever going to stand up; it has to be illogical to ever stand up. Neither do

I believe that the Federal Government is, or even under the present constitution ought to be, excluded from every field of education. That is a matter of jurisdiction, and there again is a sort of sweeping theme, that you take the field and the problems in it and start asking the questions about jurisdictions and institutions.

This is a somewhat different approach from the one we have been taking so far, and is an approach which fits the task force idea; it calls for the task force approach and it calls for different combinations of experts than we have been using hitherto.

A related point to this is this, that we feel that perhaps we are going to have to pay more attention in the future than we have in the past, to what is going on in other places in the Ontario governmental organization on these subjects. I think the deeper we get into the National Capital question, the better the liaison is going to have to be with the Department of Municipal Affairs; and the deeper we get into the Bill of Rights and securities institutions, the closer the connection has to be with the Department of the Attorney General and the experts there.

PROF. BRADY: I think, if I may interject, that at a point our committee also discussed and felt very strongly that in the case of considering any of these questions, such as for example the

report of the B and B Commission, we should be given contact with the departments of the provincial government that, after all, would be responsible for carrying out or implementing any kind of basic policy that the province commits itself to; that we should consult them when we are formulating views to present to the Government about the B and B report. In other words, their views should be solicited, should be helpful to us, but in addition the direction, of course, the goodwill of these departments and their knowledge of what the Government would be attempting, is extremely important from the point of view of the efficient implementing of the policy.

DEAN LEDERMAN: Well, that really brings me to the end of my report, Mr. Chairman.

THE CHAIRMAN: Thank you.

DEAN LEDERMAN: It seems to be in harmony with what Dr. Brady reported.

THE CHAIRMAN: I think your last point in particular is very timely, because we are getting very much into the implementation realm, for better or for worse, in a lot of these matters; and I think it would be helpful, both to the departments and to ourselves, to have that kind of contact. Are there any other remarks on this?

DEAN LEDERMAN: I don't know whether my colleagues have anything to add by way of addition,

check or correction on what I have said.

THE CHAIRMAN: You are quite satisfied, as the economist, Harvey, that the lawyers were not leading you astray?

MR. PERRY: No, I think I led them as much as an economist is ever permitted to.

DEAN LEDERMAN: Harvey's comment is quite clear in what is reported.

MR. PERRY: Even got the word "banks" in there.

THE CHAIRMAN: I think all of these suggestions will fit in very well with the arrangements we want to advance.

MR. STEVENSON: Mr. Chairman, just one point. Dr. Brady mentioned that it was thought that some of the subjects that might come up at the February conference would be logically the subjects for task forces. It was also suggested in the committee that it would be most desirable to have the task forces organized and set up as soon as possible.

PROF. BRADY: Very soon, yes.

MR. STEVENSON: It may be that waiting until one has a firm agenda from Ottawa is too late for that. I think the feeling, again, judging from past experience, is that if you wait for the final agenda, you are too late to make preparations.

THE CHAIRMAN: Was there any consideration given to the things that we think should be on the agenda? We should also be putting forward suggestions to the conference for the agenda.

DEAN LEDERMAN: The thought that strikes me, Mr. Chairman, is that this agenda promises to be just about as wide open as any agenda ever would be, just about as wide open as the agenda was at the Confederation of Tomorrow Conference. So I think one goes ahead with a number of topics, knowing full well that there will be a heading under which you can introduce them pretty fast at some point, whatever the agenda, as long as in general terms the important things are going to get in and be expressed just the way they were two or three weeks ago.

PROF. BRADY: Could I add, Mr. Chairman, that I think the organization of the task forces should be carried out very soon. I do not think we discussed actually who is to convene the important committee that organizes the task forces, and I would, off the cuff, so to speak, suggest perhaps that you might do that yourself, and convene it as soon as convenient.

THE CHAIRMAN: Was any thought given to the composition of the co-ordinating committee?

PROF. BRADY: The composition?

THE CHAIRMAN: Oh, yes.

PROF. BRADY: The Chairmen of the three existing committees.

THE CHAIRMAN: Of the three existing companies.

MR. PERRY: The Chairman of the main Committee.

PROF. MEISEL: Mr. Chairman, I was wondering whether the task force organizing committee could not meet after this session . Bill Lederman will still be here and it may save him a trip from Kingston if we could arrange it.

DEAN LEDERMAN: My train really goes in 55 minutes.

PROF. MEISEL: Sorry.

THE CHAIRMAN: Well, if we have reached the end of our agenda, that would mean that our meeting would be very expeditious if we had it now, which is a worthwhile consideration.

PROF. CREIGHTON: Before you begin this final meeting, Mr. Chairman, in the midst of this active enthusiasm for further effort, may I interject perhaps a somewhat sour note.

What has been said within the last ten or fifteen minutes by the people reporting for the two committees, seems to suggest an indefinite continuation of the Advisory Committee and very active participation by all its members.

I would like to recall the fact that this morning we ended up the discussion with the reflection that perhaps all of us would welcome a self-denying ordinance to remove ourselves from the Committee and to leave the Prime Minister the opportunity of re-constituting if he thought desirable and at all events making a full stop.

Well, we seem to have reached the position in favour of a full stop in the morning, and we now reach the position of indefinite continuance of the existing membership. This seems to be a large and fundamental contradiction.

THE CHAIRMAN: It has been quite a typical day. I was wondering if that point was going to come up.

MR. PERRY: Mornings don't count.

THE CHAIRMAN: I don't know what it is about our lunch ---

PROF. CREIGHTON: Mornings do count.

THE CHAIRMAN: Better give bigger and better lunches, I think.

PROF. CREIGHTON: Do we know our own minds? Evidently we don't.

THE CHAIRMAN: As the reports were going on, I was turning the question over in my mind. It is a matter of timing here.

PROF. McWHINNEY: Excuse me, I am catching a train.

THE CHAIRMAN: I think the complicating factor is the preparation for February 5th. That is to say, we could readily -- the sense I took out of the meeting this morning would be that the Committee might be generally disposed to suggest to the Prime Minister that, first of all, knowing that he wants a committee to continue of some kind but to get around the problem that there are those who may feel that they have given all the time they wish to give to us, without it becoming any embarrassment, to dissolve the Committee and then to re-constitute it with whatever personnel and terms of reference the Prime Minister thought appropriate, and then start from there with whatever that Committee was, start from there with these task forces and so on; and that could easily be done in the next little while but, as I say, the complication seems to be the apparent urgency of preparing for the 5th February.

DEAN DILLON: Why don't we suggest that the Committee terminate, or at least that we start up the first of April, 1968 re-constituted?

MR. PERRY: New fiscal year.

DEAN DILLON: That being a convenient date.

THE CHAIRMAN: That is a possibility, Dick. However, whereas this is not a committee of any relationship to the Legislature, the

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beginning of the new Legislature is a time when a lot of these committees are re-cast, and so on, and there is another time one might do that.

I would suggest - I hope this is not a ludicrous reconciliation of the problem - that we do both: that I will pass on the suggestions for the Committee, and obviously that is going to take a little while for the Prime Minister to ponder and to consider and to make what changes or to take what action he thinks appropriate; but that meanwhile we have our work go on, as I suggested this afternoon, according to the jobs we have to do.

I certainly would not want it thought, Professor Creighton, that I was losing sight of the morning's discussions at all. There are things that must be faced and must be passed along and will be, but to meet the immediate need, I think we might well carry on with what we have here and with the approach suggested. Is there any other business?

PROF. CREIGHTON: I would like to suggest that if you could get a copy of the report of the constitutional committee of the Quebec Liberal party, which I think has been asked for before, and distribute this, I would very much like to have a copy.

THE CHAIRMAN: Have we any report?

PROF. CREIGHTON: Mr. Gerin-Lajoie.

MR. BEER: We have written twice. Both times we were promised it within a week and we still don't have it.

PROF. CREIGHTON: Active co-operation.

MR. BEER: I will try again.

PROF. CREIGHTON: We do have the summarized version from the October press clippings, do we not?

MR. BEER: Yes.

PROF. MEISEL: If you have any problems, I have a copy.

MR. BEER: In English?

PROF. MEISEL: No, in French.

MR. BEER: They told us they were putting out an English version and we said could we have that one.

PROF. MEISEL: No, mine is all French.

PROF. CREIGHTON: That would be all right if we have it in French. I would like very much to have it.

DR. FORSEY: I would like to have it too. I have only the Le Devoir report. The French one will be all right.

THE CHAIRMAN: We will press them again. We may have to send down a carrier if we don't get any action. Don, do you want to refer --

MR. STEVENSON: The translations from

Le Devoir are now ready. The translations were done in a great hurry to try to match the date of the conferences themselves. Unfortunately through printing and all the rest of it it was only available at the start of the Conference, so that it was felt it would be much better to hold it up before there was any distribution. They have not been distributed at all yet, but we now have a batch down here, and we have them available either for you to put in your cases or else we will send them away to you right away.

PROF. CREIGHTON: This is a translation of the special issue?

MR. STEVENSON: Yes.

DEAN LEDERMAN: June 30th issue.

PROF. CREIGHTON: I know.

MR. STEVENSON: Others appeared in Le Devoir on the same subject in the subsequent month or so, several of which were sent for inclusion in the special issue but did not quite catch it. This was published in two little booklets to the special issue itself.

DR. FORSEY: What is that called?

MR. STEVENSON: "Le Quebec dans le Canada de Demain" - 1 and 2.

If anyone would like them now to take them away, we have them here. Unfortunately we have

just got in the last day a couple of letters from Le Devoir saying that they have made a number of mistakes in their original. They left a good portion of one of the articles out, which they sent to us. What we thought we would do, we had a very limited version indeed, only for delegates to the Conference and the Advisory Committee members. We would then, if we got some, we would send them to those people and to the authors of the articles, and if we got suggestions for changes back, if there was a demand for further copies, we would then perhaps incorporate a few changes in them.

25.

THE CHAIRMAN: Well, if you wish one now; otherwise we will send them to you.

Finally, pending the decision of the Prime Minister and the co-ordinating committee of task forces and other events, may I ask you to keep open the regular third Friday, which would be Friday, January 19th, and I will notify you as soon as I can of what has been decided for that date.

Is there any other business? If not, perhaps if the three Chairmen could remain just for a moment (I know you have to get off, Bill) we might consider where we go from here.

--- The meeting adjourned at 4.15 p.m.

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